

# CHINESE GOVERNMENT AND POLITICS

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WITH A FOREWORD

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## FOREWORD.

It took the author two years to write this book. During that period, the Chinese Government underwent some changes in its organization. From the Government's standpoint, these changes were meant for either remedies for inadequacies or adjustment of needs. It is premature to say that the result of these changes will be good. But that they are made with a desire to change for the better is a foregone conclusion.

Unlike other states where ~~the government~~ is a product of the people, China, in the period of political tutelage under the Kuomintang rule, is led ~~by~~ the ruling party. Again, unlike other peoples who solve their economic, social and political problems one after another, the Chinese have to revolutionize their economic, social and political structures all at the same time. The Kuomintang, playing the rôle of the Nation's leaders, takes the initiative. As a political party, it leads not only in politics but also in social and economic affairs. The three-fold character of the Nation's problem is further complicated by the wide difference between the existing conditions and the urgent needs. The large army and its unruly commanders increases its complications particularly during the period of tutelage. The solution of such a problem is a herculean task which requires an elaborate program to be executed by the united talents of the whole nation with untiring efforts for a lengthy period of time.

Dr. Sun Yat-sen laid out the program in his *San Min Chu I, The International Development of China* and other works. The Kuomintang is striving to execute its program. At the period of tutelage, its work has not been up to the people's expectation. But whether the Kuomintang rule will eventually be a success or a failure, only posterity can determine.

While the party and the government leaders work for the salvation of the country, scholars can render invaluable service by making scientific, analytic studies of the situation, thus furnishing the former with ready references and suggesting to them measures for their course of action. Two pre-requisites are indispensable for such endeavors: namely, a Chinese mentality with scientific unbiasedness and human sympathy and due consideration for the complexity and magnitude of the problem coupled with sufficient reference to Chinese sources of material. Without either of these, the study cannot be helpful to the solution of the Chinese problem and will therefore defeat its ultimate object. This volume will, I hope, pave the way for further studies which meet the requirements mentioned above.

NANKING, MARCH 1934

## PREFACE

For more than two thousand years China had been, in theory if not in practice, an absolute monarchy. The Revolution of 1911 however sounded the death knell of absolutism and transformed this ancient monarchy into a republic. High hopes were entertained when the first experiments with democracy were undertaken, but these hopes have not been realized owing to the fact that the leaders of the country failed to grasp the idea that this political reorientation meant new needs and new politics. Party strife and civil warfare filled the pages of republican history, and popular sovereignty was reduced to a phantom. Dr. Sun Yat-sen came to the rescue and provided us with a remedy which finds expression in the *Three Principles of the People* and the *Fundamentals of National Reconstruction*. As a first step toward the fulfillment of his program of national reconstruction the northern expedition was inaugurated in 1926. In 1928 a new government was established in Nanking. Though his untimely death prevented his seeing the new order, yet his teachings lived on and have guided the political and constitutional development of the past few years.

China is a democracy, similar in its main features to the democracies of the West, but with this important difference: in the West political powers are distributed among three organs; in China among five.

The government of China is now functioning under the Provisional Constitution of 1931 and the Organic Law of 1928. It is popularly known as the government of the tutelage stage, tutelage in the sense that the people are undergoing a training for the exercise of their political rights, now exercised by the Kuomintang or Nationalist Party acting as a trustee. This period of tutelage is fixed for six years, 1930 to 1935 inclusive, at the expiration of which a permanent constitution will be put into effect and the political powers of the nation will be given back to the people, the political master. Chinese politics is, therefore, in transition.

The present volume is an introductory study of Chinese government and politics rather than an exhaustive treatise. It seeks to outline the constitutional and political development of China, both before and after the establishment of the Republic; to set forth the fundamental principles upon which the Chinese government rests; to describe the function and organization of various governmental agencies, their interrelationships, practical workings, merits and demerits; to compare the political institutions in this land with analogous institutions in the West; to describe the circumstances under which China's unilateral treaties were concluded and the recent movement for treaty revision. In a word, it is a historical, critical, comparative and descriptive treatise.

The compiling of this volume has been attended with difficulties, among which the lack of Chinese source material has most keenly been felt. Save a few

treatises on the Manchu government such as *Ta Ts'ing Hui Tien* (Collected Institutes of the Ts'ing Dynasty), *Ching Ting Huang Chao Wen Hsien Tung Kao* (Collective Studies of the 'Imperial Dynasty) and Hsien's *Government of China, 1644-1911*, I have had to base my discussion upon secondary sources such as Williams' *Middle Kingdom*, Morse's *Trade and Administration of China*, Parker's *China: Her History, Diplomacy and Commerce*, Jernigan's *China in Law and Commerce*, Vinacke's *Modern Constitutional Development in China*, Hornbeck's *Contemporary Politics in the Far East*, etc. True, the present "five-power" government has been discussed by not a few writers; but the literature in this field is mostly for propaganda and is unsuitable for academic reference. Consequently my information is largely drawn from current magazines, journals and official publications of the National Government.

In the preparation of this work I am indebted to all those whose works I have consulted; to the secretariats of the five Yuan which have given me the desired information; to my colleague, Professor Tih-sing Yao for his suggestions in connection with the chapter on National Finance; to Mr. Feng-ying Wang, former judge of the Supreme Court for his criticism on the chapter on Law and Law Courts; and to President Yung-ching Yang of Soochow University who has not only relieved me from some of my routine duties but has also given me constant encouragement. Particularly to Dr. Walter B. Nance, ex-President of Soochow University and now Western Adviser, do I wish to

express my gratitude. He has read the entire manuscript, improved my English and given me his advice and criticism on many important questions, which his long residence in China and profound knowledge of Chinese affairs have made valuable. In spite of all this, the work may not be free from errors for which I alone am responsible.

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# CHINESE GOVERNMENT AND POLITICS

## CHAPTER I

### SYSTEM OF GOVERNMENT UNDER THE OLD REGIME

#### SCOPE OF STUDY OF GOVERNMENT UNDER THE OLD REGIME

**B**ROADLY speaking, by the term "old regime" so far as government is concerned is meant the regime prior to 1911, which may be traced back even to the days of the Chou Dynasty, 1122-255 B.C.<sup>1</sup> For practical purposes, however, it is simply intended to denote the system of government under the Manchus, who crossed the Great Wall in 1644 and governed the Chinese Empire under the Dragon Flag until 1911. This so-called "alien rule" was much resented by the Chinese, because of the rise of Chinese nationalism, which precipitated an armed rebellion and resulted in the establishment of a republic. The year 1911 in Chinese political history, therefore, constitutes a line of demarcation between the old regime on the one hand and the period of republican constitutionalism on the other. It falls within the province of this chapter to describe, in skeleton only, the government of the

<sup>1</sup> Cf. Hornbeck: Contemporary Politics in the Far East, p. 19.

Manchus. The struggle for constitutional government and the institution of the present "five-power" system will be dealt with in the following chapters.

### ORIGIN OF THE MANCHU GOVERNMENTAL SYSTEM

To begin with, it must be pointed out that the government of China prior to 1911 was patterned after the type of the Chou Dynasty, the traditional system of the Chinese. Of course, changes had been introduced and improvements made on that antiquated system since 255 B.C., but until the outbreak of the Revolution in 1911, it continued to be the foundation on which the governments of the succeeding dynasties were constructed. Though aliens the Manchus were, they did not institute a government radically different from the system already in existence when they settled down in Peking (now Peiping) in 1644. The reason for this is not far to seek. Constituting only a minor portion of the Chinese population, the Manchus found it necessary to preserve what was essentially Chinese. Furthermore, they were conquerors, and as such they feared the opposition of the natives. Hence, the adoption of a government which was generally considered as the "model" Chinese type was but a logical result of the policy of pacification and conciliation. To be sure, the Manchus subjugated the natives from the standpoint of military force. Culturally and institutionally, they were assimilated by the conquered.

In brief, the governmental machinery of the Chou Dynasty<sup>1</sup> was represented by six boards, each headed by a Mandarin (minister):

<sup>1</sup> Hirth: *Encyclopedia Britannica* (11th edition), Vol. VI, article on China, Government and Administration.

Hirth: *Ancient History of China*, pp. 112-126.

Yen: *A Survey of Constitutional Development in China*, pp. 45-54.

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1. The Mandarin of Heaven was the Prime Minister. He fixed the amount of revenues, regulated public expenses, managed the imperial households and performed many important civil and military services.
2. The Mandarin of Earth was intrusted with the duty of supervising agricultural, commercial and particularly educational matters.
3. The Mandarin of Spring was in charge of religious ceremonies.
4. The Mandarin of Summer was charged with military duties like expeditions, suppression of rebellions, maintenance of public order, etc.
5. The Mandarin of Autumn was in charge of punishments.
6. The Mandarin of Winter was charged with the instruction in public works, agriculture, and commerce.

Over and above the heads of the boards stood the Emperor to whom they were responsible. In addition, there were two extra-legal advisers, Duke Chou and Duke Shau, who constituted a sort of Privy Council.

### FEATURES OF THE MANCHU SYSTEM

It was on this basis, roughly speaking, that the Chinese government was organized in 1644. First of all, the system embodied the features of an autocracy.<sup>1</sup> The Emperor was not merely a titular head but an actual ruler claiming to rule by divine right and inherited prerogatives. In legal theory, the rôle played by the monarch in legislation, in administration, and in judicial matters was unlimited, for all sovereign powers radiated from him. In actual practice, he governed with the assistance of his ministers and advisers. Regardless of whether or not the Emperor

<sup>1</sup> Morse: *International Relations of the Chinese Empire*, Vol. I, p. 1.

ruled in person, the theory was that he was the "Son of Heaven" and that he was chosen (by heaven) to perform a heavenly mission to advance the interests and to promote the welfare, of his subjects. The Emperor was the "father of his people," so to speak, rather than "a master placed on the throne to be served by slaves." Mencius once said, "The people are the most important element in the nation, . . . and the sovereign is the least." The old Chinese government was, therefore, of the type of benevolent despotism.

Secondly, the system was characterized by an absence of the principle of separation of powers. The Manchus did not realize the importance and necessity of division of labor. There was no legislature to make laws nor independent judiciary to administer justice. Laws were either the products of mature deliberation on the part of ministers, or else they took the form of royal decrees. In the case of the former, they were brought to the Emperor for final approval. In all cases, laws were promulgated by him and in his name they were enforced. In the field of administration, the wishes of ministers were usually followed, though the Emperor had the ultimate voice in determining fundamental policies of the state. In the realm of judicial matters, the Emperor formed the highest court, but judicial powers were distributed among many different organs of government. In finance, the Emperor's power was absolute. The absence of legislative check and control constituted the real strength of his position.

Thirdly, the system was unitary in principle. At the apex was the Emperor. Officers of the central government were but his humble servants, and the governors of the provinces and the magistrates of the districts were in turn the agents of the central government. In short, each officer was immediately responsible to the one above him. It was through this

hierarchy of governmental agents that national administration was carried on and laws of the state were enforced, strictly or nominally, throughout the four corners of the Empire. As a matter of theory, the conduct of all officers, high and low, was subject to the review of the Emperor, and the matter of their appointment and removal was solely determined by him. But because of the lack of a well developed system of communication, all this centralization was rendered illusory. Furthermore, the provinces had been independent states in the old days,<sup>1</sup> and in them the idea of "states' rights" had not altogether disappeared. With little contact between the government at Peking and the governments in the provinces, it was not to be wondered at that not infrequently laws of the nation should be evaded by provincial authorities, orders of the central government set at defiance, and executive work maladministered. Indeed, the relation between the central government and provincial governments was not far from what was described by Parker, namely, that which exists in a confederation.<sup>2</sup>

### THE EMPEROR

In the whole political system the Emperor deserves first attention. He occupied a position which is rather unique. Unlike the English king since the Glorious Revolution who "reigns but does not govern" and

<sup>1</sup> The provinces were independent states during the Chou Dynasty. According to an old Chinese work, "Chou Li," there were in existence at one time, 773 states. The number was reduced to seven during the latter part of the dynasty. It was not until 255 B.C., however, that the supremacy of the Ch'in state was established. In theory, Chinese feudalism was destroyed with the founding of the Ch'in Dynasty (255-206 B.C.), but its roots and branches were not eradicated until a much later time.

<sup>2</sup> Dr. E. H. Parker considers China proper, (eighteen provinces during the Manchu regime) "a confederation of homogeneous provinces" and holds the view that the existence of Manchu power is "a matter of comparative unimportance to the provinces, each of which is sufficient unto itself, and exists as an independent unit."

Parker: China, Her History, Diplomacy and Commerce, p. 161.

the Prussian king and the Russian czar prior to the revolution of 1918 and 1917 respectively who governed with an iron hand, he ruled, with or without the assistance of his ministers but in consideration of "the needs of the people" and in accordance with such ancient virtues as "impartiality, profoundness of knowledge, diligence in affairs, respect on ceremonial occasions, kindness in heart and acts, following of good precedents of ancestors, wisdom to know men and sagacity to accept advice." In case of failure to fulfill this moral obligation and to observe this unwritten law on the part of the Emperor, his deposition might be requested and in serious cases revolution might be resorted to which was recognized to be a legal right of the people.<sup>1</sup>

#### (a) *Powers of the Emperor*

Theoretically, all powers of the state belonged to him and were at his disposal. Practically, he did not and could not exercise all of them directly in view of his limited wisdom and the massiveness of state business. It was quite natural, therefore, that he should delegate a large part of his powers to the ministers. Of course, the scope of powers exercised by them varied with the character of the reigning sovereign who, at his own discretion, might grant more of his powers to them or withdraw them entirely.

In legislation the Emperor alone possessed the power of enactment, amendment and abrogation of laws, though the advice of ministers and of high officers of the state was generally accepted. As to administration, it was the rule and practice that important

<sup>1</sup> The two ancient revolutions led by King T'ang and King Wu before the Christian era have been generally considered to be in accordance with the will of heaven and of men (public opinion). The right of revolution, based on tradition was an established principle of government in China. Of course, no despotic ruler would tolerate a revolution.

Hornbeck: op. cit., p. 27.

Jernigan: China in Law and Commerce, p. 56.

affairs should be submitted to the Emperor for approval and minor duties performed by the departments directly. The matter of conferring titles and giving pensions, appointment and removal of officers of the state, creation and abolition of services, treaty-making, boundary questions, military affairs were important administrative matters falling under the Emperor's jurisdiction. Judicially, he was the highest court of appeal, and two sessions were to be held by him annually. As a matter of practice, appeals were extremely rare. In religious affairs, he offered sacrifices to heaven, earth, Confucius and Buddha. In addition, appointments to various religious offices such as those of Dalai Lama, the Lama Buddhists, and the chief Taoist were made by him. In the intellectual world the Emperor also assumed the leadership, for in his name all provincial and metropolitan examinations were given and palace examinations were conducted by him in person.

In the exercise of such powers, however, the Emperor was not without limitations.<sup>1</sup> In the first place, he was bound by the unwritten constitution of the Empire, by customs handed down from time immemorial and by established precedents. Second, he was bound by the opinions and decisions of his ministers. Third, the influence of his personal entourage constituted a further check. In short, the Chinese Emperor stood between the English titular head and the Prussian real executive.

### (b) *Succession*

Succession to the throne in China was based upon the hereditary principle, which means that a ruler derives his office and power by inheritance. The Chinese practice (beginning from the reign of the Emperor Yung Cheng 1723-1734) was, however, different

<sup>1</sup> Morse: Trade and Administration of China, p. 37.

from that in England and other monarchical states. For there the principle of primogeniture is followed, that is, elder sons are preferred to younger, and female heirs do not succeed to the throne unless male heirs are lacking, while in China the selection of the fittest among certain qualified princes was the practice. There was no crown prince during the life time of the Emperor; the throne simply fell upon the one whom the living monarch nominated as successor. Indeed, the period between 1644 and 1911 abounds with instances of princes other than eldest sons ascending the throne.<sup>1</sup>

This Asiatic practice of selecting the fittest is not without its demerits, though it has the advantage of choosing the best qualified prince. First, it might give rise to court intrigues. The living monarch might unconsciously favor one prince and put others at a disadvantage, though nomination was not officially made known till his last breath. Under such conditions clash of interests among princes of the royal blood would seem to be inevitable and would in all probability produce shameful plots. Second, if no preference should be expressed by the reigning sovereign as to who should inherit the throne, his sudden death might disturb the whole nation in default of a legal successor.

### (c) *Financial Support*

The idea of royal finance in China was in perfect accord with the old patrimonial theory according to which *imperium*, the power of government, involves *dominium*, the power of ownership. It was on this theory that Louis XIV pronounced his noted words, "I am the state." It was on the basis of this

<sup>1</sup> Hsien: Government of China, p. 41. •

Morse: Trade and Administration of China, p. 35.

Williams: The Middle Kingdom, Vol. I, p. 404.



theory also that it became the practice of kings and princes in the seventeenth and eighteenth centuries to exchange, sell, and alienate territory as if it were their personal property. Though the Chinese Emperor was not a feudal lord in the sense of an owner of great estates, as was the case of early English and French Kings, it was a clear understanding that the entire property of the state was at his disposal.

In England, where parliamentary institutions first came into existence, debates on money grants to the king served as occasions for the parliament to air its grievances. When parliament's supremacy became unquestioned, provision was made for a civil list, determining an annual amount to be spent by the monarch and his household. In China there was no legislative check. The Board of Revenue, one of the six administrative departments, was an organ of the Emperor. For it to work out a budget, even in the crudest sense of the word, would have been superfluous. All that it did was probably to prepare a financial statement in the form of a memorandum for royal assent. If a deficit occurred, it would be met by taking out what was in store in the Emperor's treasury in order that the needs of the people might be attended to. On the other hand, any surplus would remain in the custody of the Board of Revenue, which, as has been said, was the Emperor's financial agency. A genuine pre-Taiping expenditure sheet<sup>1</sup> shows that the expenses for the support of the Emperor and his household amounted to 1,309,000 taels out of a total of 31,522,800 taels. This does not mean, of course, that the Emperor could not spend more. The absoluteness of the royal power in finance was best instanced by the Empress Dowager's converting the money appropriated for naval expansion to the

<sup>1</sup> See Parker, *op. cit.*, p. 197. The Taiping period is about the time of the American Civil War. A tael was worth about three shillings during the Taiping period.

construction of the Summer Palace, a<sup>1</sup> private royal garden, near the end of the last century.

From all this it is to be concluded that the Emperor was supported by the revenues from the public, that he himself actually determined the royal expenses, and that royal finance, if it was not national finance, was practically identical with it.

This "confusion of the government funds and the private property of the Emperor" rendered it difficult to ascertain the financial situation of the state, and put the interests of the monarch above those of the people.

#### REASONS FOR THE CHINESE PREFERENCE FOR AN EMPEROR PRIOR TO 1911

. Despite the fact that there was a Revolution in 1911 which set up a Republic, the fact that for more than two thousand years the monarchical form of government had been maintained without interruption must be admitted. Even the reform movement of 1898<sup>1</sup> and the report of the constitutional commission in 1906<sup>2</sup> aimed at nothing more than the institution of a constitutional monarchy. If the Manchus had been sincere and earnest in their effort to establish a constitutional government, there is reason to believe that the Revolution of 1911 might have been avoided and that China might have evolved along the path of constitutional monarchy.

However, the maintenance of a monarchy in China in which the Emperor was the center of politics, for so long a period, is not without reasons. First, it was due to the fact that the divine right theory of kings was acceptable to the Chinese people. The Emperor claimed to be the "vice-regent of heaven and interpreter of its decrees to the whole world." On account

<sup>1</sup> See the next chapter, pp. 33-34.

<sup>2</sup> Ibid.

of this theory, various extravagant titles were employed in addressing him, such as "Hwang-ti" (august sovereign), "Hwang-shang" (august lofty one), "Sheng-hwang" (sacred sovereign), "Tien-tsz" (son of heaven) and "Wan-sui-ye" (sire of ten thousand years).<sup>1</sup>

Second, it was because the Emperor was, in a practical sense, a "symbol of imperial upity." China was the "middle kingdom" to which all the surrounding states sent their tribute as vassals. In return she extended to them the protection and assistance necessary for their peace. The territorial extent of the Chinese Empire under the Manchus, including such dependencies as Mongolia, Tibet, Korea, Tonkin, Annam, Liuchu, Formosa, and the tribute it received from them, are indications that the Emperor was the tie of allegiance and the real authority of the Chinese political entity. Had the Manchus taken an actual interest in the dependencies, China might have been the British Empire of the East.

Third, it was because the Chinese Emperor was the social, moral, and intellectual leader of the Empire. Williams regards him as the fountain of power, rank, honor and privilege, head of religion, the source of law and dispenser of money.<sup>2</sup> To him the people looked for inspiration and guidance. His conduct was the example of the nation and his words meant the peace and tranquillity of the Empire.

Monarchism in China was tolerable if not desirable. The decay of the Chinese monarchy was not so much owing to external opposition as internal corruption.

## THE NAI-KO

### (CABINET OR GRAND SECRETARIAT)

Next in significance to the Emperor was the Nai-ko which consisted of four principal and two assistant

<sup>1</sup> Williams: *op. cit.*, p. 394.

<sup>2</sup> *Ibid.*, p. 395.

chancellors. Its duties<sup>1</sup> were to regulate the canons of state, to issue edicts for the Emperor, to pass remarks on the memoranda presented to him, to stamp the seals on important state documents and to transmit communications from the ministers to the Emperor and vice versa. In short, the Grand Secretariat was "to deliberate on the government of the Empire" and to assist the Emperor "in the general management of state affairs." In addition, it was within its competence to bring to the attention and action of the Emperor matters regarding the appointment, removal, and degradation of all government officers, revenue and taxes, regulation of the army, etc. Other functions devolving upon the members of the Grand Secretariat were performed by ten assistants. They included such things as "presiding on all state occasions and sacrifices, coronations and reception of embassies."

The Grand Secretariat was an important institution because of the advanced age of its members and its nearness to the throne.<sup>2</sup> Its members were appointed only from ministers of departments, censors-general or viceroys.

### THE CHUN-CHI-CHU

#### (COUNCIL OF STATE OR GRAND COUNCIL)

But the Grand Secretaries were "too far away from the palace precincts" for constant conferences desired by the Emperor. Moreover, they held concurrent positions at the same time, which made it difficult for them to perform the high missions they were charged with. In time, therefore, the Grand Secretariat declined and was superseded in importance by the Council of State (created about 1730), which became the

<sup>1</sup> Collective Studies of the Imperial Dynasty, Vol. LXXX, pp. 3-4.

Hsien: op. cit., pp. 70-72.

Williams: op. cit., pp. 418-419.

<sup>2</sup> Hsien: op. cit., p. 73.

"actual Privy Council, Imperial Chancery and Court of Appeals (Grand Court of Revision)."<sup>1</sup> Wherever the Emperor went, the Councillors had to follow. Their duty was primarily military in character, having to do with the construction and repairing of military roads, army equipment, expenditure and other things pertaining to the army. As a matter of expediency, other political functions devolved upon them as well, so that they actually became the successors of the Grand Secretaries. In this respect, the relation between the Grand Secretariat and the Council of State bears a close resemblance to that between the English Privy Council and the Cabinet.

As regards the number of Councillors, it was usually fixed at six with Manchus always holding the majority. However, the matter was decided "according to His Majesty's pleasure." Records show that between 1730 and 1875 out of 115 Councillors 59 were Manchus. The rest were 47 Chinese and 9 Mongols.<sup>2</sup> Below the Councillors were 32 secretaries assisting the Councillors. Holding daily sessions over which the Emperor presided, it became as influential a body as the Grand Secretariat at its climax of power.

## OTHER POLITICAL INSTITUTIONS OF THE CENTRAL GOVERNMENT<sup>3</sup>

### (1) *The Tu-cha-yuan (Censorate)*

The Censorate consisted of two principal and four assistant censors-general, twenty-four departmental censors, fifty-six provincial censors, two censors for the imperial clansmen and ten for the city of Peking. Its duties comprised the supervision of governmental

<sup>1</sup> Hornbeck: op. cit., p. 23. Both the Council of State and the Grand Secretariat were abolished by the Decree of May 8, 1911.

<sup>2</sup> Hsien: op. cit., p. 81.

<sup>3</sup> Collective Studies of the Imperial Dynasty, Vols. LXXXII-LXXXIII (in Chinese) and Siao, General History of the Manchu Dynasty, Vol. I, pp. 464-476 (in Chinese).

officers, both metropolitan and provincial, in the performance of their official duties and their personal conduct and the auditing of accounts of the Board of Revenue and the provinces. In addition it supervised the construction of public buildings and river dams and directed charity works. When joined with the Board of Justice and the Grand Court of Revision, it formed the highest tribunal next to the Emperor.

Theoretically, the censors were free to express their opinions. Practically, this was "little else than a fiction of state," for the fear of offending the Emperor on the part of the censors proved stronger than the sense of duty. However, the admirable character of many censors produced some good effect on the conduct of the Emperor as well as governmental officers, and the existence of such an institution proved to be highly desirable.

## (2) *The Li-fan-yuan (Colonial Office)*

The Manchus were empire builders. As a result of their military conquests the different nationalities within the Empire presented great divergence in language, religion, custom, tradition and ways of living. To govern them all alike would certainly be unwise. Hence the creation of the Colonial Office. As usual, the Office was to govern the dominions or territories not yet qualified to assume the status of provinces. Its duty was to superintend the wandering and settled tribes in Mongolia, Ili, Kokonor and Tibet, and the tributary tribes in Szechuen and Formosa and to regulate the government of the nomads. For this reason only Manchus and Mongols were appointed as its officials. The work was distributed among six different bureaus which attended to such matters as boundaries, titles of nobility, official appointment, receiving of visiting princes from Inner and Outer Mongolia, organization of banner units, relay communi-

cation and trade. Nevertheless, the control exercised by the Office over these people was rather meager. Little effort was made to introduce to them Chinese institutions, political or social, the chief concern being that they remain loyal to the Peking authorities.

### (3) *The Han-lin-yuan (Academy of Letters)*

Of the five traditional social classes in China (scholars, farmers, laborers, merchants or traders, and soldiers), scholars were placed at the top. The significance of the Academy of Letters as an institution for the advancement of learning cannot, therefore, be overlooked. Williams compares it with the old Babylonian institution for the education of promising youth.<sup>1</sup> Though it was not exactly of such a nature, it was doubtlessly the leading institution devoted to cultural research and the publication of literary works and official documents under the auspices of the government. In personnel, it was composed of two presidents or senior members, usually appointed for life, superintending the studies of the graduates (members of the Academy), four grades of officers of five each, and an indefinite number of graduates. It was quite an honor to be a member of this body which was always composed of successful candidates in the highest government examinations. In a way, it was a reservoir of talents because from it important officers of the government were chosen by the Emperor.

### (4) *Other Minor Courts*

Other institutions of the central government comprised the following:<sup>2</sup>

1. Office of Transmission: to transmit petitions from the officials to the Emperor.

<sup>1</sup> Williams: op. cit., p. 434.

<sup>2</sup> Collective Studies of the Imperial Dynasty, Vols. LXXX-LXXXIII.

Williams: op. cit., pp. 433-436.

Hsien: op. cit., pp. 271-284.

2. Chancery of Memorials: to transmit memorials. The difference between these two institutions was that only one kind of documents from the provinces passed through the Office of Transmission. They contained the regular reports of the provincial governments. All others went through the Chancery. The duty of the Office was "to copy, analyze, and criticize," that of the Chancery "to guard and transmit."
3. Court of Sacrificial Worships: to perform ceremonies for the dead.
4. Court of State Ceremonials: to perform ceremonies for the living.
5. Imperial College: to give instruction to various grades of students from provincial graduates down to unqualified students.
6. Banqueting Court: to prepare and arrange state banquets.
7. Imperial Household: to do miscellaneous work for the Imperial Household.
8. Superintendent of H.I.M.'s Stud, an office for raising horses.
9. Grand Court of Revision: with the Board of Justice and the Censorate, it formed a High Court of Appeal.
10. Court of Imperial Relatives.
11. Imperial Astronomical College: to direct the ascertainment of times and the movements of the heavenly bodies.
12. Imperial Hospital with medical duties.

In short, the Grand Secretariat and the Council of State were the two chief deliberative and advisory institutions of the Emperor. Others were irregularly organized executive bodies performing only a small part of the administrative work of the nation.



## NATIONAL ADMINISTRATION

The principal agencies for the administration of imperial affairs were the six Boards, which were organized in practically the same way. Each was headed by two presidents and four vice-presidents. Subordinate to them were the directors, undersecretaries and controllers.

(1) The Board of Civil Service<sup>1</sup> was somewhat similar to the modern department of the interior, having to do with the government and direction of all officers in the civil service and the making of rules regarding their appointment, degradation and promotion, the conferring of titles and rewards, the granting of leaves and examinations. These duties were distributed among four Bureaus: the Bureau of Appointments, the Bureau of Examinations, the Bureau of Records and the Bureau of Titles (for hereditary titles). Appointment to a governmental post could be acquired by either one of the following methods: competitive examinations, some official rank secured from the Emperor because of meritorious service rendered by the family of the conferee, recommendation of a high authority, promotion from the ranks of under-clerks and purchase (a term which was cleverly designated as "contribution for appointment to public office." This method which "commercialized public service," disintegrated the "intellectual aristocracy" and "inspired the gift and reception of bribes," was a corrupt feature of the Manchu political system.). The term of office, except that of the Grand Secretaries and Councillors of State, was three years.

(2) The Board of Rites<sup>2</sup> was concerned with ritual observances: etiquette observed at court, regulation

<sup>1</sup> Collective Studies of the Imperial Dynasty, Vol. LXXX, p. 12.

Hisen: op. cit., pp. 99-139 (civil service laws).

Williams: op. cit., p. 421.

<sup>2</sup> Collective Studies of the Imperial Dynasty, Vol. LXXXI, p. 7.

Hisen: op. cit., pp. 140-183 (the organization of the Board, its duties and civil service examinations).

Williams: op. cit., p. 425.

of the official dress of varying ranks; ceremonial of personal intercourse between varying or equal ranks, that of official intercourse, rites in connection with the worship of deities and spirits of departed monarchs and sages, the management of foreign embassies, education and examinations. For the performance of these duties, five Bureaus were created: the Bureau of Ceremonial Systems, the Bureau of Sacrificial Rites, the Bureau of Supply for the preparation of diplomatic banquets and sacrificial offerings, the Diplomatic Bureau and the Engraving Bureau for the manufacturing of official seals. Attached to the Board of Rites was the Department of Music, offering music on ceremonial occasions. The most important duty of the Board was educational and the center of the educational system was the examination. It was through competitive examinations that persons offered themselves as candidates for governmental positions.

(3) The Board of Revenue<sup>1</sup> was empowered to direct the territorial government of the empire, to regulate duties and taxes, to collect the same, to determine expenditure, to keep a record of population, and to audit the accounts of the provincial and central treasuries and granaries. In addition, it fell to the Board to regulate such matters as currency and coinage, weights and measures, and commercial intercourse. To expedite business fourteen bureaus on a territorial basis were organized.

(4) The Board of War<sup>2</sup> was entrusted with the direction of all military affairs, transmission of official despatches, and national defense. The navy was under the control of special department. Other du-

<sup>1</sup> Collective Studies of the Imperial Dynasty, Vol. LXXXI, p. 1.

Hsien: op. cit., p. 185-190.

Williams: op. cit., p. 423.

<sup>2</sup> Collective Studies of the Imperial Dynasty, Vol. LXXXI, p. 9.

Hsien: op. cit., pp. 255-258.

Williams: op. cit., pp. 424-426.

ties concerning the appointment, promotion, rewards and punishments of military officers, inspection of troops and issue of general orders, military equipments and ammunition were performed by four Bureaus; the Bureau of Military Selection, the Bureau of Statistics, the Bureau of Communications and the Commissariat Bureau for keeping records of the service men, recruitment of officers by competitive examinations, and the supply of uniforms and munitions. As a matter of fact, the jurisdiction of the Board was limited, because the metropolitan troops and the provincial land and sea forces were not under its control.

(5) The Board of Punishments (Justice)<sup>1</sup> had under its jurisdiction all matters relating to punishments. It was to determine measures pertaining to the application of laws, the grant of pardons, the hearing of evidence and the giving of decisions, the rate of fines and interest. In a limited sense, it was a criminal and civil court combined. When joined with the Censorate and the Grand Court of Revision (Court of Appeals) it formed a Higher Court of Justice. In the autumn it constituted itself as a Court of Errors when these three united with six other courts. Offices within the Board were created for the performance of such duties as the recording of the Emperor's decisions on appeals from the provinces, the publication of all codes, the overseeing of jails and jailers, and the receiving of fines levied in commutation of punishments.

(6) The Board of Works<sup>2</sup> was charged with miscellaneous duties. It was to take care of all public structures, such as palaces, temples, altars, city walls, etc., to attend to the manufacture of military stores, to regulate weights and measures, to take charge of

<sup>1</sup> Collective Studies of the Imperial Dynasty, Vol. LXXXI, p. 13.  
Hsien: op. cit., pp. 221-226.  
Williams: op. cit., pp. 426-427.

<sup>2</sup> Collective Studies of the Imperial Dynasty, Vol. LXXXI, p. 18.  
Hsien: op. cit., pp. 266-271.  
Williams: op. cit., p. 428.

all water-ways and dikes, canals, bridges, and to see that the imperial mausolea were in good condition. Like other Boards the Board of Works had under it four Bureaus: the Bureau of Construction, the Bureau of Weights and Measures, the Bureau of Rivers and Canals and the Bureau of Imperial Tombs, Fuel and Appointments. „Aside from these Bureaus the “Precious Source” mint, the governmental arsenal, the imperial manufacturing establishment and the Peking Municipal Bureau were attached to the Board.

To these six Boards three others were added: the Board of Foreign Affairs in 1901, in place of the Tsung-li-yamen created in 1861, the Board of Commerce and the Board of Education in 1903.

### NATIONAL FINANCE

In order to secure economy and efficiency, governments of modern states have developed a scientific budget system. This was not the case with China under the old regime. Her system of national finance was, to use the expression of Parker, “rotten to the core, childish and incompetent.”<sup>1</sup> First, there was no central control or fixed responsibility. The piecemeal revenue from the provincial treasuries, appropriated for specified items of imperial expenditure, went directly to the recipients for the purposes assigned without passing through the authorities at Peking.<sup>2</sup> Thus the revenue from provinces A and B might be designated for the entertainment of foreign embassies and that from C and D for the maintenance of imperial armed forces or for the construction of highways, the repairing of river dams, etc. In all cases the payee received the payment directly from the payer. Theoretically, the Board of Revenue made all these

<sup>1</sup> Parker: *op. cit.*, p. 206.

<sup>2</sup> Morse: *Trade and Administration of China*, p. 94.

Hsien: *op. cit.*, p. 206.

arrangements, but the fulfillment of their financial obligations by the provinces depended much upon the degree of their loyalty to the Imperial Government. The fact was, the revenues of the nation were, to a very large extent, collected by the local authorities, the district magistrates. In those days of political isolation, evasion of assigned payment was quite possible under the pretext of local financial distress.

Second, the absence of a regular system of currency retarded greatly the process of financial operations.<sup>1</sup> Taxes were collected in terms of taels. Though the exchange rate was fixed by the Government to be 1,000 copper cash for one tael of silver, local officials frequently raised it to two, three or four thousand copper cash for a tael.<sup>2</sup> What was worse was, the revenue might also be in the form of grain and silk instead of money.

Third, the confusion of government funds and the private property of the Emperor made it difficult to ascertain whether the government treasury was full or empty.<sup>3</sup> National administration might be brought to a standstill and national welfare neglected.

In spite of the inadequacy of the system, average expenditure fell far below average receipts.<sup>4</sup> Throughout the 18th century an annual balance of 10,000,000 taels was almost regular.<sup>5</sup> In view of the limited activities of the government this was no surprise. It was not until the latter part of the last century that the Government, owing to large appropriations for foreign wars, fell heavily into debt.

As to government revenue,<sup>6</sup> the following constituted the important sources:

<sup>1</sup> Morse: *Trade and Administration of China*, p. 95.

Hsien: *op. cit.*, p. 195.

<sup>2</sup> Hsien: *op. cit.*, p. 196.

<sup>3</sup> *Ibid.*, p. 204.

<sup>4</sup> Parker: *op. cit.*, p. 196.

<sup>5</sup> *Ibid.*, p. 197.

<sup>6</sup> For the last four items, see Morse, *Trade and Administration of China*, pp. 97-120. For the sources of revenue, see Wagel, *Finance in China*, pp. 363-390.

1. Land tax which yielded a revenue of 31,184,042 tls. of silver.<sup>1</sup> (1887 record)
2. Receipt from the salt monopoly, yielding 12,557,552 tls. of silver.<sup>2</sup> (1887 record)
3. Likin (created in 1853) a levy of one half of one per cent on the value of articles transported from one place to another within the country, yielding 16,548,199 (1887 record).<sup>3</sup>
4. Tribute-payment in kind, usually silk and grain, sometimes hard wood, pearls, ginseng and other native products.
5. Native customs.
6. Foreign customs yielding 8,296,275 in 1865.
7. Miscellaneous taxes.

Government expenditure was classified into fifteen different kinds:<sup>4</sup>

1. The Imperial Mausolea . . . . .	106,861
2. Through the Department of Revenues . . . . .	180,000
3. Sacrificial . . . . .	206,604
4. Ceremonials . . . . .	24,134
5. Salaries of Officials . . . . .	1,908,084
6. Civil Service Examinations . . . . .	190,979
7. Army maintenance . . . . .	14,913,215
8. Relay Communications . . . . .	2,077,561
9. Scholarships . . . . .	152,309
10. Rewards and Charities . . . . .	225,125
11. Reconstructions and Repairs of Dams and Canals . . . . .	not fixed
12. Purchases . . . . .	91,708
13. The Government Silk Factories . . . . .	307,833
14. Allowances for Officials . . . . .	4,724,305
15. Miscellaneous . . . . .	415,959
1887 record                      TOTAL-TAELS. . . . .	25,524,677

These fifteen classes may be grouped into seven items:<sup>5</sup>

1. Ceremonials and Sacrifices . . . . .	337,609
2. Education and Examinations . . . . .	330,760
3. Civil Officials . . . . .	4,845,453

<sup>1</sup> Hsien: op. cit., p. 195.

<sup>2</sup> Ibid., p. 198.

<sup>3</sup> Ibid.

<sup>4</sup> Ibid., p. 205.

<sup>5</sup> Ibid.

4. Military . . . . .	18,718,474
5. Charities and Rewards . . . . .	225,125
6. Purchase and Manufactures . . . . .	579,641
7. Miscellaneous . . . . .	415,959

These seven items show that the largest expenditure was for military purposes, being 73.33 per cent of the total; that the least was for education and examinations, being 1.29 per cent. They cover only the payments made directly by the Board of Revenue. Other items of imperial expenditure, paid by the provincial treasuries, are not included.\*

For the payment of taxes two seasons of the year were fixed, in the Spring from the second to the fourth month (corresponding to March and May), in the Fall from the eighth to the eleventh month. Recommendations by local officials for partial or complete exemption of the years' taxes could be made only on specific grounds such as bad crops, and they rarely met the disapproval of the Emperor. Taxes were collected by the district magistrate, whose ability in fulfilling this obligation had a great deal to do with his future.

There was no national bank in which to deposit government funds. They were either kept by the provincial and district authorities or the national treasury at Peking.

### LAW AND LAW COURTS

In modern democracies and constitutional monarchies law plays an extremely significant part in the maintenance of order. In the old Chinese Empire, however, it "took only a secondary place."<sup>1</sup> The reason was this. On the part of the people, a dispute was considered as "an evidence of absence of virtue," appeal to law "an acknowledgement of lack of morality" and appearance in court "a tremendous blow to

<sup>1</sup> Hsien: op. cit., p. 215.

one's social prestige." On the part of the government, the policy was "to discourage appeals to law" and to carry this into operation punishments were made unusually severe. How was justice maintained then under such conditions? The answer is to be found in the fact that arbitration and compromise rather than judicial proceedings constituted the chief means of settling disputes.<sup>1</sup>

In spite of this unfavorable conception and governmental policy, Chinese law was codified. There were altogether 436 divisions under seven heads: 46 divisions were penal, 28 administrative, 82 civil, 26 ritual and ceremonial, 71 military, 170 criminal and 13 constructional.<sup>2</sup> The first part was of a general character, dealing with punishments and offences, and the conduct of government officers.<sup>3</sup> The second consisted of civil laws regulating hereditary succession of ranks and titles, the system of government, the conduct of magistrates, the interference of superior magistrates with the proceedings of the lower courts.<sup>4</sup> The third related to finance, comprising rules for enrolling the people, succession and inheritance, marriage and divorce, granaries and treasuries, smuggling, mortgage and usury, coinage, customs's duties, taxes and monopolies.<sup>5</sup> The fourth comprised the ritual law, concerning state sacrifices and ceremonials, ancestral worship, illegal sects, magic and sorcery.<sup>6</sup> The fifth consisted of military laws having to do with the protection of the palace and the government of the army, the management of imperial cattle, the forwarding of despatches by couriers and the protection

<sup>1</sup> Hsien: *op. cit.*, p. 215.

<sup>2</sup> *Ibid.*, p. 216.

<sup>3</sup> Giles: *Historic China and Other Sketches*, pp. 125-127.

Williams: *op. cit.*, p. 386.

<sup>4</sup> Giles: *op. cit.*, p. 128.

Williams: *op. cit.*, p. 387.

<sup>5</sup> Giles: *op. cit.*, pp. 128-130.

Williams: *op. cit.*, pp. 387-388.

<sup>6</sup> Giles: *op. cit.*, pp. 130-132.

Williams: *op. cit.*, p. 388.



of the frontier.<sup>1</sup> The sixth was composed of criminal laws, defining robbery, homicide and murder, quarreling and fighting, false accusations, bribery and corruption, disobedience to parents, forgery and fraud, incest and adultery.<sup>2</sup> The seventh had to do with public works and ways.<sup>3</sup>

Though the severity of its punishments and its doctrine of social or extensive responsibility<sup>4</sup> have been adversely criticized, the code has not met unfavorable comments. Thus, in his estimate of Chinese law, Williams made the following remark: "Still, with all the tortures and punishments allowed by the law, and all the cruelties superadded upon the criminals by irritated officers or repacious underlings and jailers a broad survey of Chinese legislation, judged by its results and the general appearance of society, gives the impression of an administration far superior to other Asiatic countries."<sup>5</sup> Another favorable comment was quoted from the *Edinburgh Review* by the same authority in the following words: "By far the most remarkable thing in this code is its great reasonableness, clearness, and consistency, the business-like brevity and directness of the various provisions, and the plainness and moderation in which they are expressed."<sup>6</sup>

As to the system of courts,<sup>7</sup> that of the magistrate was at the bottom. It dealt with all cases and provided all kinds of punishments. Appeals might be carried to the prefectural court and the court of the circuit intendent. But the court of the commissioner of justice terminated all the judicial proceedings in the

<sup>1</sup> Giles: *op. cit.*, pp. 132-133.

Williams: *op. cit.*, pp. 388-389.

<sup>2</sup> Giles: *op. cit.*, pp. 133-140.

Williams: *op. cit.*, p. 389.

<sup>3</sup> Giles: *op. cit.*, p. 140.

Williams: *op. cit.*, p. 391.

<sup>4</sup> Bashford: *China An Interpretation*, p. 275 and p. 281.

<sup>5</sup> Williams: *op. cit.*, p. 391.

<sup>6</sup> *Ibid.*

<sup>7</sup> Hsien: *op. cit.*, pp. 219-226.

provinces. Only rarely were appeals made to the Board of Justice at Peking which, together with the censor's court and the Grand Court of Revision formed the highest tribunal next to the Emperor, an institution commonly known as the "Three Supreme Tribunals" or "Three Law Chambers." The Emperor constituted the highest court in the realm, and held two sessions every year: one during the first ten days of the eighth month and the other ten days before the winter festival. The former was known as the autumn trial and the latter, the palace trial. Not infrequently, however, the Emperor would designate some Grand Secretary or Councillor of State to preside at the trial. In the capital, judicial matters were handled by the court of the representative magistrate, the court of the metropolitan prefect in case of appeals and then the Court of the Supreme Bench or Court of the Gendarmerie or that of the censors of Peking.

Judicial powers were also allotted to non-judicial institutions such as the Board of Revenue and the Board of Public Works, which were competent to entertain cases affecting public property and taxes.<sup>1</sup> Judicial decentralization was furthered by the fact that officials and nobles, scholars and imperial clansmen, Mongolians, and Tibetans were not amenable to common courts.<sup>2</sup> While judicial administration was characterized by decentralization, the exercise of judicial powers by administrative officers constituted a system of union of powers, unscientific and irrational, which fortunately is undergoing a radical change because of the rise of independent courts.

#### LOCAL AND TERRITORIAL GOVERNMENT

For purposes of administration the country was divided into provinces, circuits, prefectures, chou,

<sup>1</sup> Hsien: *op cit.*, p. 223.

<sup>2</sup> *Ibid.*

t'ing and hsien, or districts.<sup>1</sup> The province corresponds to the French department, the prefecture, to the arrondissement and the district, to the commune. The circuits, prefectures, chou and t'ing were of little importance except that they served as areas for judicial administration. The division was, therefore, quite uniform and symmetrical.<sup>2</sup> At the head of each province was the governor, or the viceroy, sometimes both, responsible for the entire administration of the province and the execution of national laws. In addition, there were two commissioners, financial and judicial. The governor and the commissioners received their appointment directly from the Emperor. Somewhat inferior to them were the Commissioner of Education and the Intendents for Salt and Grain. In a way, these commissioners and intendants served as the governor's assistants. In another, they were sent out by the central government to check the conduct of the governor, for in China the form of government was unitary rather than federal.

Next in importance to the provinces were the districts which were, and still are, the real administrative areas of the nation. The magistrate was the chief. His function was threefold: "collection of taxes, settlement of litigation and maintenance of peace and order."<sup>3</sup> In this respect, district politics was different from provincial politics. For while in the province a rudimentary separation of powers was maintained, in the district the magistrate was executor, legislator and judge. Two restrictions were placed on the district chief. First, his term of office like that of his superiors was limited to three years, subject to no reappointment. Second, a native was legally disqualified to serve as magistrate in his own province.

<sup>1</sup> Hornbeck: *op. cit.*, p. 21, and Siao, *op. cit.*, pp. 478-495.

<sup>2</sup> Morse: *Trade and Administration of China*, diagram between pages 54 and 55.

<sup>3</sup> Hsien: *op. cit.*, p. 305.

The theory behind these restrictions was that his nativity and a long term might tempt him to corrupt practices. On the other hand, if he was an outsider and if his term was short, he might act with a dauntless spirit, and thus independence might be secured.

On a different basis was organized the government of the territories, such as Mongolia, Tibet, and Chinese Turkestan. In name there was a controlling agency known as the Colonial Office, but the policy of the government was never very active. With the exception of a part of Chinese Turkestan which was incorporated as a province in 1884 and Kirin and Heilungkiang in Manchuria which attained the same status in 1907, little positive effort was made to bring these territories under more direct control.

Inner Mongolia was divided into six leagues. Each league contained from 1 to 8 tribes; each tribe from 1 to 7 banners.<sup>1</sup> The banners were the smallest divisions for administrative purpose. In addition to the appointment of three Tartar-generals, the Chinese Government reserved the right to call league conferences and to determine for them such measures as might be brought up for deliberation.

Outer Mongolia was carved into four regions. Each region contained from 1 to 5 leagues; each league from 1 to 2 tribes; each tribe from 1 to 22 banners.<sup>2</sup> Because of geographic isolation and Russian intrigues it was left to drift along in its own way.

In Tibet there were two authorities, the Chinese and the native. The Chinese authority was political, that of the native was ecclesiastical.<sup>3</sup> Two imperial residents were appointed, one for Front or Eastern Tibet, the other for Rear or Western Tibet, who had control of all things temporal as well as spiritual. They constituted the medium of communication be-

<sup>1</sup> Hsien: *op cit.*, p. 325.

<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.*, p. 330.

tween the Chinese Government and the Napal Court and their primary duty was to promote in every way possible intercourse between the Chinese and the Tibetans. The ecclesiastical authority was exercised by a hierarchy of buddhist lamas,<sup>1</sup> whose acts were, however, supervised by the Chinese imperial residents.

Ch'inghai or Kokonor<sup>2</sup> was divided into five tribes, which were further divided into banners. An imperial resident was appointed to take charge of the local administration. As with other colonial officers, his control and influence were not strongly felt.

#### INADEQUACY OF THE OLD SYSTEM

Such was the governmental system under the Manchus. In governing a country as large as China, it proved to be inadequate. First of all, its inadequacy lay in the fact that the relation between the central government and provincial governments was too loose. This looseness was due not only to the lack of a good system of communication but also to the semi-independent status that the provinces enjoyed in the past. Second, it was revealed by the absence of a scientific budget system. Too much of the nation's revenue was spent for military purposes and too little was for education. Other needs of the people scarcely received attention. Third, there was no separation of powers. Sovereignty resided in a single person, the Emperor, who was the nation's chief-executive, the chief legislator and the chief justice. Fourth, because of the absence of a written constitution, personal and property rights of the people were under no legal protection, in spite of the theory of benevolence. Fifth, the salaries of government officers, especially district magistrates, were not adequate. This under-pay gave rise to dishonesty and corruption, which found

<sup>1</sup> Harris: *Europe and the East*, pp. 327-328.

<sup>2</sup> Hsien: *op. cit.*, p. 333.

expression in "squeeze." Sixth, neither was the training of government officers well provided for. In name, all officers were chosen from among those successful at the public examinations, yet the subjects of examinations were of little practical value. Seventh, the doctrine of extensive responsibility embodied in the legal code, and judicial decentralization failed to promote justice as law and law courts are expected to do. Eighth, territories were not properly supervised. The policy of the government was passive rather than active with the result that since the founding of the Republic a separation movement on the part of Mongolia especially has been markedly going on. Aside from all this, the Manchus were aliens. As such, they were bound to rouse opposition even if they proved themselves to be competent rulers. Unfavorable popular sentiment, incompetency to rule, coupled with political disintegration all hastened a revolution, and the roar of canon at Wuchang in 1911 was the actual result.

## CHAPTER II

### MOVEMENT FOR A CONSTITUTIONAL GOVERNMENT

#### NATURE OF THE MOVEMENT

THE government established by the Manchus, as has been described, was a government of men and not of laws, a government in which theory and practice were widely divergent. In name, the people possessed the right of revolution in case of tyrannical rule; in actual fact, they were so restricted in both their words and actions that revolution was well-nigh impossible. It is true that in theory the Emperor's conduct was regulated by an unwritten constitution and the ancient virtues, but because of the lack of an effective means to put him in check in case of deviation or waywardness, the limitation was nominal rather than real. Evidently such a government could not be popular and was destined to meet with opposition. The purpose of the reform movement at the opening of the twentieth century was, therefore, primarily the adoption of a constitution, so that the government might operate in accordance with laws. To the advocates of reform, as well as to statesmen, monarchy—constitutional monarchy of the English type, would have been a satisfactory form of government. But the Manchus were not sincere in their effort to establish a constitutional government. They resorted to the tactics of delay. It was only when their dynasty was on the verge of extinction that

they granted the Nineteen Articles,<sup>1</sup> a body of constitutional principles imposed on them by the National Assembly. Before that was done, however, they found the revolution already advanced beyond their power to suppress it.

### CAUSES OF THE MOVEMENT

The movement for constitutional government in China was a phase of the struggle for existence. It was an outcome of political necessity and a means of adaptation to environment, to the situation, both within and without. In tracing the causes of such a movement four points may be mentioned in particular. First, the defeat of China in international wars.<sup>2</sup> Since the beginning of her intercourse with western states, twice was she beaten in war: with Great Britain alone in 1839-1842, and with Great Britain and France jointly in 1857-1858. Then for the third time she suffered reverses in her war with Japan in 1894-1895. Finally, the year 1898 witnessed the scramble of European powers for concessions in China.<sup>3</sup> For such humiliating defeats and encroachments on her sovereignty the inefficiency of the government of China was largely responsible. Second, the influx of western learning. Since the Treaty of Nanking and subsequent treaties which opened the gates of China to the commerce and influence of western states merchants and missionaries, scholars and other classes of people had set up their residence in this land. They introduced into China the idea of constitutional government. It has been estimated that up to 1904 the Society for the Diffusion of Christian and General Knowledge of Shanghai and the Central China Religious Tract

<sup>1</sup> Hsien: *Government of China*, pp. 374-375.

*China Year Book*, 1912, pp. xxiii, xxiv.

Bau: *Modern Democracy in China*, pp. 386-387.

<sup>2</sup> Bau: *Foreign Relations of China*, pp. 1-17.

<sup>3</sup> *Ibid.* pp. 37-59.



Society of Hankow produced 1,100 different works which were on sale at Shanghai.<sup>1</sup> Of these 60 were on education, 40 on geography, 90 on history, 110 on political economy and government, 40 on philosophy, 120 on military science, 100 on literature, etc. Then there were Chinese students seeking knowledge abroad.<sup>2</sup> In 1872, 120 young boys were sent to America. In the next year another group was despatched to England. In the year 1906-1907 there were 15,000 Chinese students in Japan. The influence that these students exerted upon the political thinking of the Chinese people could not pass unnoticed. Third, the incompetency of the Manchus to rule. Manchus were placed in high positions regardless of their qualifications. Corruption was rife on every hand. Offices of government were sold at auction. National administration was not properly carried on and popular welfare was set at naught. This internal corruption led to foreign encroachments, territorial, political and economic. Fourth, the inadequacy of the governmental system.<sup>3</sup> The political machinery was outworn and the government organized on that basis could not but fail to promote the welfare of the people. Some change was therefore highly necessary if China was to live as a nation.

### STAGES OF THE MOVEMENT

Prior to the inauguration of constitutional reform in 1905, mention must be made of the ill-fated reform movement of 1898<sup>4</sup> led by K'ang Yu-wei, a noted Chinese scholar. In January of that year he held a conference with the officials of the Tsungli-yamen

<sup>1</sup> Yen: *A Survey of Constitutional Development in China*, p. 113.

<sup>2</sup> *Ibid.*, pp. 114-115.

<sup>3</sup> See the same topic in the first chapter, pp. 29-30.

<sup>4</sup> Yen: *op. cit.*, pp. 122-123.

Vinacke: *A History of the Far East in Modern Times*, pp. 147-149.

For the political views of K'ang Yu-wei see Tseng, *Modern Chinese Legal and Political Philosophy*, pp. 49-64.

(Foreign Office) looking to political reconstruction. In his memorial<sup>1</sup> to the Emperor he recommended that the privilege of free expression of opinion be granted to the people, that the system of taxation be readjusted, that young and energetic men be appointed to replace the old officials and that national administration be reorganized so as to bring into being twelve departments: Judiciary, Finance, Education, Legislature, Agriculture, Commerce, Public Works, Railways, Posts, Mining, Army and Navy. While the Emperor Kwang Hsu was anxious to carry out these reforms, the *coup d'état* of the Empress Dowager, September 21st, 1898, brought to an end all schemes of reform.

In 1901 the Empress Dowager as Regent issued an edict promising reforms,<sup>2</sup> but it was not until 1905 that a commission of five persons was appointed to study the system of government in Europe and America as well as in Japan. The favorable report of this commission the next year resulted in the issuance of an Imperial Edict, September 1, 1906, promising the adoption of a constitutional government in the near future.

"Now all the countries in the world have been brought into communication and close touch, and hence the governmental system and laws of one country cannot be with convenience entirely independent of and different from those of another.

"The governmental system and laws of our country have been transmitted from generation to generation with so little change and improvement that they are now out of harmony with the general existing conditions of the world, with the result that our country is in a dangerous position and we are filled with great anxiety and earnest apprehension. Without making extensive researches into the political systems and governmental methods of other countries, so as to reform ours, we shall not be able to carry out the plan laid down by our Ancestors on the one hand, and meet the expectation of the people for peace and order on the other. Therefore we sent our High Ministers to various countries

<sup>1</sup> Yen: op. cit., p. 122.

<sup>2</sup> *China Year Book*, 1912, p. 352.

Blund and Blackhouse: *China Under the Empress Dowager*, pp. 419-424.

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to study and investigate their governmental systems and administrative methods. Now these Ministers have returned and in their report have submitted their opinion, as the result of their study and investigation, that the weakness and inefficiency of our country is due to the lack of close touch between the government and the people and entire separation of those who are in office and those who are not. The officials do not know how to protect the people, and the people how to defend the country. That other countries are wealthy and strong is primarily due to the adoption of a constitution, by which all the people are united in one body and in constant communication, sane and sound opinions are extensively sought after and adopted, powers are well divided and well defined, and financial matters and legislation are discussed and decided upon by the people. Moreover, other countries look to one another for improvement, and amend their constitutions and change their laws to their highest efficiency. So it is not a mere accident that their governments are in such good working order and their peoples enjoy so great happiness.

"In view of the situation our country is in, there is no other way to power and prosperity than, after having carefully and minutely examined the constitutions of other countries, to adopt one by selecting portions of all, if necessary, best suited to us, whereby all civil affairs are open to the public but the controlling powers remain with the Throne, so that a permanent and proper foundation may be laid for our country. But at present no definite plan has been decided upon and the people are not educated enough for a constitution; if we adopt one hastily and regardless of the circumstances, it will be nothing more than a paper constitution. Then how can we stand before the people and ask them to repose confidence in us? First of all, let us do away with the long-continued corruptions and clearly define responsibilities. To effect these we must begin with the reform of the official system by deciding upon what new offices should be created and what old ones should be abolished, and then introduce the change gradually. Different codes of laws should be drawn up, national education, co-extensive with our territory, established, the financial system reformed, the army, remodeled, and a modern police system adopted. All classes of the people should be taught to understand and to take an interest in politics, so as to prepare themselves to participate in the coming constitutional government.

"Therefore we hereby command all the ministers and officials both within and without the metropolis to exert their utmost to carry out our purpose and realize it in definite results, so that after several years, when the plan shall have been fairly well drawn up,

we, after having ascertained the general condition of the people and in accordance with the rules used in other countries at such a juncture and for such a purpose, will definitely decide upon the adoption of a constitution. The date when it will go into operation will be announced to the people in due time, the length of time intervening between the present and the date of such announcement being solely dependent upon the progress of the people in education.

"We further command the Resident-Generals, Viceroys and Governors to inform all classes of the people to this effect: that they make a special effort for education, know the principles of loyalty to the Emperor and patriotism to the country, understand the importance of union and progress, abstain from interfering with public welfare by a selfish purpose or defeating the accomplishment of a large object by a little discontent, respect order and preserve peace—all these in order to acquire the qualifications of a subject under a constitutional government. This is our earnest hope."<sup>1</sup>

The year of 1906 also witnessed a reorganization of the administrative departments which numbered ten altogether:

1. Foreign Affairs
2. Civil Affairs
3. Finance
4. War
5. Justice
6. Agriculture, Industry and Commerce
7. Territories
8. Rites
9. Communication
10. Education

The old dual headship was abolished. Each department with the exception of the Department of Foreign Affairs was now headed by a president and two vice-presidents.

The second stage was characterized by a series of Imperial decrees<sup>2</sup> commanding the creation of the

<sup>1</sup> Yen: op. cit., pp. 124-127.

<sup>2</sup> Decree of September 20, 1907; Decree of October 19, 1907.

Yen: op. cit., pp. 127-129.

National Assembly and Provincial Assemblies. The National Assembly was to serve as "the foundation of a parliament" and Prince Pu Lun and Grand Secretary Sun Chia-rai were appointed as its presidents. The Provincial Assemblies were intended to serve as a sort of training school for service in the National Assembly.

But the people in the provinces were not satisfied with the hitherto indefinite promises of constitutional reform. In the spring of 1908 they despatched their delegates to the capital to petition for an early convocation of the parliament and the establishment of constitutional government. In response to this demand another important Imperial Edict was issued on August 27, 1908, proclaiming the proposed principles of constitution and a nine-year program (1908-1917).<sup>1</sup> The principles of the constitution were but a reassertion of the Emperor's power. They provided for the sacredness and inviolability of his person and contained an enumeration of his powers—powers relating to legislation, appointment of all officers, fixing of their salaries, declaration of war, making of peace and conclusion of treaties, establishment of courts and determining of imperial expenses.

The parliament was such only in name, for it was merely to propose legislation, not to legislate. Even in the field of national finance, it was simply to assist the Emperor in framing the budget. The duties and rights of the people were also touched upon, but the Emperor reserved the right to restrict the liberty of his subjects. The nine-year program embraced an outline of reforms to be undertaken within a period of nine years: reforms in local self-government, education, law and courts, civil service, police and budget. Such were the items of the third stage.

The convocation of the Provincial Assemblies of October 14, 1909 and of the National Assembly on

<sup>1</sup> Yen: op. cit., pp. 129-132.

October 3rd, 1910 were the outstanding features of the fourth-stage.<sup>1</sup> The Provincial Assemblies, according to the regulations governing them, were simply to "deliberate as to what would seem to be beneficial for the Province" and to "advise their superiors of their opinions." Primarily advisory in character, their decisions did not carry much weight, especially in view of the fact that a veto of the provincial executive could not be overcome by repassing the measure. If the Assemblies did not revise or withdraw their decisions on reconsideration, the provincial executive might refer the difference to the National Assembly for final settlement. What was more, the governor or viceroy had the right to question the Provincial Assembly on any matter, but it was not empowered with this same weapon in dealing with the executive.

The National Assembly consisted of two hundred members. One hundred of them were appointed by the Emperor and the other half were chosen by the Provincial Assemblies through a system of indirect election.<sup>2</sup> Its functions were practically the same as those outlined in the proposed principles of the constitution. Though limited in powers, the National Assembly and the Provincial Assemblies, being the only organs of public opinion, did bring pressure to bear upon the Emperor in their struggle for a constitutional government and to them must be attributed the shortening and revision of the nine-year program.

The fifth stage was the most eventful. Soon after the opening of the Provincial Assemblies, another delegation of the provinces was despatched to the capital to demand an early convocation of the parliament. But the first petition presented in January, 1910 brought forth no result and the second one in July of the same year only called forth the Imperial Rescript: "We have given unequivocal orders in this

<sup>1</sup> Yen: *op. cit.*, pp. 132-133.

<sup>2</sup> Vinacke: *Modern Constitutional Development in China*, p. 84.

matter and desire not to be vexed with further prayers."<sup>1</sup> It was only with the support of the National Assembly convoked on October 3rd, 1910 and of the viceroys and governors in the provinces that the third petition presented on October 27 resulted in the issuance of the Imperial Edict on November 4, 1910, shortening the nine-year program and fixing the date for the opening of the parliament at 1913. In the meantime the National Assembly busied itself with the work of organizing a responsible cabinet. But before that was achieved, the contracting of the Hukwang Railway Loan, contrary to the wishes of the people, caused the explosion of a bomb in Wuchang on October 10, 1911, which commenced the movement for the overthrow of the autocratic regime and the establishment of a Republic.

## THE REVOLUTION OF 1911

### (a) *Revolutionary Activities Before 1911*<sup>2</sup>

But the revolutionary incident on October 10 was not the first of its kind in the history of modern China. As far back as 1850 there was the Taiping Rebellion (1850-1865), a movement against the Manchus participated in by from 30,000,000 to 50,000,000 persons and suppressed only with the assistance of foreigners, particularly Ward and Gordon.<sup>3</sup> Though the movement proved a failure, owing to its lack of leadership and a constructive program, it shook the very foundations of the Manchu power. Then there was the bomb explosion of 1904 directed against the members of the Constitutional Commission, who only narrowly escaped the danger. Again, in May, 1907, 30,000 people participated in an insurrection about 40 miles south of Amoy. In July of the same year

<sup>1</sup> Yen: op. cit., p. 134.

<sup>2</sup> Ibid., pp. 112-113.

<sup>3</sup> Brown: The Chinese Revolution, pp. 7-8.

En Ming, a Manchu, governor of Anhwei, was assassinated by a police officer. In September a body of 2,000 insurgents attacked Yochow and the inhabitants of Kwangsi lent their assistance. Finally, in March, 1911, 72 revolutionists were arrested and executed in Canton. They worthily bear the name of martyrs. These and other revolutionary activities had taken in rapid succession since 1900. They were one and all aimed at the overthrow of the Manchu regime and the institution of a popular government.

*(b) Causes of the Revolution*

The bomb explosion on October 10 simply set things moving. The way to revolution had long before been prepared. As one writer on contemporary Far Eastern politics has so aptly said: "When a local mutiny develops within four weeks into a nation-wide revolt, leading within four months to the abdication of an undefeated ruling family, effecting an accepted revolution among from three to four hundred million people and involving four million square miles of territory, great forces have been at work. When the power of a once great dynasty crumbles as did that of the Manchus, either the explosive used against it has been very powerful, or the resistance very weak, or both. In any case, a successful revolt, however sudden and however much a surprise its outbreak, is not fortuitous; the conditions which develop revolution must have been present; the plan of the leaders, if not the weapons of their followers, must have been prepared in advance; the authority of the rulers must have been undermined, and the moment for action must have arrived."<sup>1</sup> In other words, the Revolution of 1911 had its underlying causes. First of all, the resentment at alien rule had been very strong among the Chinese. They could not forget the day of military humiliation.

<sup>1</sup> Hornbeck: *Contemporary Politics in the Far East*, p. 3.



However benevolent the Manchu rule might be, this sense of nationalism was too strong to be suppressed. Then there was the added reason that the Manchus had not been sincere in their effort to carry out constitutional reforms. Numerous edicts promising reforms had been issued since 1900, it was true. But the Manchus hardly intended to translate their words into actions. Consequently, such decrees were no more than mere scraps of paper. Thirdly, increasing financial burdens constituted a further factor of popular discontent. Since 1900 governmental expenditure had been steadily going up. There were indemnities to be paid, armies to be reorganized, railways to be constructed and educational institutions to be established. These alone almost exhausted the national treasury. When increased levies were exacted to meet the general needs of the country, dissatisfaction became more acute. Fourthly, feeling sure that nothing could better the situation save to resort to radical means, Chinese leaders devoted themselves wholeheartedly to revolutionary propaganda, both at home and abroad. Revolutionary societies were organized, the most prominent of which was the T'ung-mênghui, headed by Dr. Sun Yat-sen. Revolution was preached. Funds were raised and plans organized only to wait for an opportune moment. The seeds of revolution having been thus planted, two immediate factors led to its outbreak. These were the Hukwang Railway question<sup>1</sup> and the policy of centralization.<sup>2</sup> In May, 1911, the Manchu Government contracted a loan with the banking group of England, France, Germany, and the United States with which to build two railways, one from Hankow, the center of China, southward to the northern boundary of Kwangtung Province and the other westward to the eastern

<sup>1</sup> Williams: *China Yesterday and To-day*, pp. 471-474.

<sup>2</sup> Vinacke: *A History of the Far East in Modern Times*, p. 203.

Vinacke: *Modern Constitutional Development in China*, p. 68.

boundary of Szechuen Province. These were to be connected with railways to be built by Chinese companies from the two provincial capitals, Canton and Chengtu. To the people in general the four-power loan was objectionable because foreign supervision of railways might hasten the process of carving China into spheres of influence. So far as railway construction in Szechuen was concerned, little progress had been made, because out of the eleven million taels raised by the provincial railway company seven million taels were lost in rubber speculation by the president of the company. Seeing that not much could be done by the provincial company owing to the lack of funds, the Ministry of Posts and Communications attempted to undertake the construction itself. This policy of railway centralization, however, roused the opposition of the shareholders, who demanded a reimbursement of their outlay. When that was refused riots broke out here and there in the Province of Szechuen. In addition, the policy of centralization deliberately adopted by the Peking authorities in order to bring the provinces under its direct control was in conflict with provincial autonomy and the theory of "states' rights." It was this issue of centralization against decentralization that precipitated the outbreak of 1911. Decentralization might prove a source of weakness, but "the resistance to the tardy efforts to centralize was," as Hornbeck puts it, "due not alone to local disapproval of that policy; it was a result also of dissatisfaction with the personnel of the rulers and with the conditions which prevailed throughout the official system."<sup>1</sup>

<sup>1</sup> Hornbeck: *op. cit.*, pp. 36-37.

(c) *Events Leading to the Abdication of the Manchus  
and the Founding of the Republic*

(1) THE SPREAD OF THE REVOLUTION

To give a detailed account of the revolutionary campaign would certainly be interesting but would occupy much more space than is available here. To make a long story short, the mutiny of the Wuchang garrison (October 10, 1911) was responded to with hearty support and districts and provinces up and down the Yangtse River declared their independences one after the other. By December Nanking was captured and was established as the revolutionary headquarters. In the same month Dr. Sun Yat-sen returned from Europe and was promptly made the president of the revolutionary government (December 28). At the same time, Dr. Wu Ting-fang, Minister for Foreign Affairs, issued his noted diplomatic circular on behalf of the revolutionary government:

"... We have, in short, taken every possible step to protect vested interests, safeguard international obligations, secure continuance of commerce, and shield educational and religious institutions; and what is even more important, striven continually to maintain law and order, sustain peace, and promote a constructive policy upon sound and enduring grounds. . . .

"We must not be judged by the past; we are trying to bring China into her own; to elevate her to the standard that the people of the Occident have ever been urging her to attain, and the stumbling block of to-day, as it has been during the past centuries, is the Manchu Dynasty. Our foreign friends must from a sheer sense of fairness concede that we have the right to win the laurels of freedom by fair fight in the field, and to avoid the rest we again appeal to them to use their influence to secure in the Manchu mind recognition of the utter hopelessness of the continuance of the Dynasty."<sup>1</sup>

<sup>1</sup> *China Year Book, 1912, "The Revolution,"* pp. xvii-xx.

## (2) RECALL OF YUAN SHIH-KAI TO SERVICE

While all this was going on, Yuan Shih-kai, being in retirement then, was called upon to suppress the rebellion. After some delay Yuan heeded the call and for a time he seemed likely to be successful in plans for meeting the crisis. But with the capture of Nanking by the revolutionary troops, things took a new turn and "a prolonged and expensive civil war" seemed likely to be the only solution of the situation for the maintenance of Manchu power.

## (3) THE ACTIVITIES OF THE NATIONAL ASSEMBLY<sup>1</sup>

In the meantime, the National Assembly, beginning its second session on October 22, enthusiastically lent its assistance to the revolutionary cause. Its first act was to memorialize the Throne to dismiss Sheng Hsuan-huai, Minister of Posts and Communications who was responsible for the contraction of several hated foreign loans and the policy of railway centralization. Then it proceeded to demand the right to be consulted in the draft of a constitution, the exclusion of the members of the Imperial family from the cabinet and the pardoning of all political offenders. Under the pressure of necessity the Manchus yielded. Thereupon Yuan Shih-kai was appointed Prime Minister on November 1st and was authorized to organize a new cabinet. On the following day the National Assembly adopted the Nineteen Articles, the basis of the future constitution, which were sanctioned by the court on November 3. On November 8, Yuan Shih-kai was elected Prime Minister by the National Assembly and in the same month he presented a memorandum defining the future relationship between the cabinet and the Throne. The proposal aiming at the creation

<sup>1</sup> Bau: *Modern Democracy in China*, p. 14.

Vinacke: *Modern Constitutional Development in China*, p. 103.

of a responsible cabinet was unconditionally accepted. The issuance of an edict on December 6, entrusting all governmental duties to the cabinet made possible the coming into existence of a responsible government.

The concessions of the Manchus were indeed liberal. Had they been granted earlier, they might have appeased the people. But the moment for compromise was gone and the aspirations of the people could be met only by the actual establishment of a Republic.

#### (4) YUAN'S TACTICS

Between monarchy and republic, therefore, China had to choose. But the choice was by no means an easy one, for it involved serious consequences. To retain the monarchy would mean continuous civil war. On the other hand, a republic would necessitate the abdication of the Manchus. What was more, neither the imperialists nor the republicans were willing to give up their cause without a struggle. It was under such circumstances that Yuan Shih-kai, representing the Peking government and in control of the northern army and navy, played his three-cornered game. "By skillfully playing on the fears and weaknesses, first of the one and then of the other side," he not only peacefully settled the issue between the North and the South, but also secured what he actually desired.

#### (5) NEGOTIATIONS BETWEEN THE NORTH AND THE SOUTH

Negotiations had already begun (about the middle of December) before the arrival of Dr. Sun in Shanghai on December 25. The demands of the revolutionary government were the abdication of the Manchus and the establishment of a Republic. Liberal treatment was, however, to be accorded to the Manchus in return. In reply the court insisted that the question

of a Republic be determined by a legally constituted National Assembly. It was only when Yuan Shih-kai and others exerted their pressure upon the court that the edict of February 3 was issued, authorizing Yuan with full powers to open up negotiations with the South:

"As we have received the telegraphic memorials from Tsun Chun-hsuan, Yuan Shu-hsuan, and Minister to Russia Lu Cheng-hsiang, and others, and Tuan Chi-jui and the other Military Commanders, requesting us speedily to adopt the Republican form of government to avoid further bloodshed, and in view of the serious situation of the country and the industrial depression from which the people have suffered, we cannot bear to see the millions in misery for the glory of one Family. But the questions of the matters relating to Our Ancestral Temples and the Imperial Mausolea are important, and the courteous treatment of the Manchus, Mongolians, Mohammedans, and Tibetans should be prearranged. We, therefore, give whole powers to Yuan Shih-kai to make the arrangements carefully, and speedily to consult with the People's Army beforehand in regard to the articles of treatment, and to report the whole to us."<sup>1</sup>

#### (6) ABDICATION OF THE MANCHUS

The edict of abdication was issued on February 12, providing for a transfer of sovereignty from the Emperor to the people and authorizing Yuan Shih-kai with full powers to organize a Provisional Republican Government to enter into negotiations with the Revolutionary Army. Articles of favorable treatment were also agreed upon, by which the title of the Emperor was to be retained and a pension of 4,000,000 taels per annum was to be given to the Imperial Family. The edict of February 12 reads as follows:

"Yuan Shih-kai was elected by the Tzu-cheng-yuan (National Assembly) to be Premier. During this period of the transfer of the government from the old to the new, there should be some means of uniting the South and the North. Let Yuan Shih-kai

<sup>1</sup> *China Year Book, 1913*, p. 481.

Vinacke: *Modern Constitutional Development in China*, pp. 114-115.

organize with full powers a provisional republican government and confer with the Republican Army as to methods of union, thus assuring peace to the people and tranquillity to the Empire, and forming the one Great Republic of China by the Union as heretofore of the five peoples, namely, Manchus, Chinese, Mongols, Mohammedans, and Tibetans together with their territory in its integrity."<sup>1</sup>

#### (7) FINAL AGREEMENT BETWEEN THE NORTH AND THE SOUTH

The terms of abdication having been thus agreed upon the North and the South were finally brought together by a further compromise which resulted in the resignation of Dr. Sun as Provisional President in favor of Yuan Shih-kai and the acceptance by the latter of the Republic. With the election of Yuan as Provisional President on February 15 and Li Yuan-hung, who led the Revolution in Wuchang, as Provisional Vice-President a few days later by the National Council, the episode of revolution was brought to a conclusion.

### THE REPUBLIC AND ITS PROBLEMS

#### (a) *Domestic*

Both internally and externally, however, the infant Republic was confronted with serious problems. The first related to the qualifications of the electorate. Imbued with the ideas of monarchism and accustomed for centuries to autocracy, the masses of the Chinese people at the time of the birth of the Republic were entirely unprepared for republican constitutionalism. Their understanding of democracy was at best superficial and due to their lack of education and experience the ways and means of operating a national democracy were new to them. Many had yearned for a Republic, it is true, but in bringing it into existence they

<sup>1</sup> *China Year Book*, 1913, p. 482.

Vinacke: *Modern Constitutional Development in China*, pp. 115-116.

leaped over an "unbridged gap." The most urgent task of the Republic was, and is, therefore, to equip the people by the processes of education to exercise their political rights.

The second was with reference to national finance." The Republic brought with it new problems—the disbandment of soldiers, the payment of salaries of government officers, and administrative reorganization, all demanding immediate solution. They required an enormous amount of money, and unless they were satisfactorily solved, chaos was certain to follow. To be sure, the provincial taxing machinery was kept going even while the Revolution was in progress, but the revenue was barely sufficient for local administration. Unless the finances of the state were put on a sound basis, there was little hope that the new Government could bring about much improvement.

The third problem concerned the relation between the executive and the legislature. The executive branch was headed by Yuan Shih-kai, the leader of the Northern Military Party, while the legislature was dominated by the members of the Nationalist Party. The tactics of Yuan were well known to his political rivals, who used every possible means to curtail his powers. With the existence of such a situation, the harmonious coöperation between these two departments, so essential for the successful operation of a government, constituted a difficult problem.

The last problem had to do with the relation between the central government and the provincial governments. One of the causes of the Revolution of 1911 was the policy of increased centralization. Should China maintain a centralized form of government in name as well as in fact? If so, how could this be done without rousing the opposition of the provinces? Or should the provinces be left free in handling their own affairs as they were wont to do prior to the Revolution?



*(b) Diplomatic*

Diplomatically, China was confronted with the problem of the revision of her unilateral treaties. Constituting a stumbling block to China's development as a free and independent nation, such treaties must be revised. But with her home affairs in an unsettled state, the task proved to be onerous.

## THE PROVISIONAL CONSTITUTION

The Provisional Constitution,<sup>1</sup> in accordance with which the new Government was to function, was promulgated on March 10, 1912, the day on which Yuan Shih-kai was inaugurated as Provisional President of the Republic. It is a concise document of 56 articles. The first section vested the sovereignty in the whole body of the people, defined the territory of the Republic and entrusted the exercise of sovereign powers to the National Council, the Provisional President, the Cabinet and the Judiciary. The second was in the nature of a bill of rights. The third dealt with the National Council, prescribing its size, its meetings and the privileges of its members. The powers of the Council were also defined to include legislation, budget approval, taxation, currency, determination of weights and measures, contraction of public loans, interpellation, impeachment, etc. The Council was to be dissolved on the day of the convocation of the National Assembly and its powers were then to be exercised by the latter. The fourth contained provisions regarding the Provisional President and Vice-President who were to be elected by the National Council. The Provisional President was to be the fountain of all executive power and the commander-in-chief of the army and navy. It was within his competence to

<sup>1</sup> Prior to the adoption of the Provisional Constitution there were the Twenty One Articles governing the organization of the Provisional Government at Nanking (adopted in Oct., 1911).

issue orders, to grant pardons and to introduce measures to the National Council, and in accordance with laws, to declare a state of siege. With the concurrence of the National Council, he might ordain and establish the administrative system and official regulations, appoint members of the cabinet, ambassadors and ministers, declare war and conclude treaties. The fifth concerned the cabinet, which was constituted by the premier and the ministers. They were to countersign all bills introduced by the Provisional President and all laws and orders issued by him, and were entitled to speak before the National Council. The sixth pertained to the judiciary. Judges were to be appointed by the Provisional President and the Minister of Justice and were guaranteed full independence and security of tenure during good behavior. The last stipulated that the National Assembly must be convened within ten months after the promulgation of the Provisional Constitution, that the permanent constitution was to be adopted by the National Assembly, and that the Provisional Constitution might be amended by the assent of three fourths of the members of the National Assembly at a quorum of two thirds of the whole number, or upon the application of the Provisional President by a majority vote of three fourths at a quorum of the Council of four fifths of the total number of members.

This "supreme law of the land," though provisional in character, as its title indicates, was the only legal constitution functioning between its promulgation in 1912 and the promulgation of the Organic Law in 1928,<sup>1</sup> a basic instrument to put into operation the "five-power" government. It is true that its provisions were violated and that other constitutional documents were adopted between 1912 and 1928, but such violations and documents constituted the very

<sup>1</sup> *China Weekly Review*, October 13, 1928, pp. 224, 225, 234.  
*Far Eastern Review*, October, 1928, p. 443.

causes of the civil war which covered a large part of the constitutional history of the Republic.

As revealed by its contents, the Provisional Constitution was meant to create the cabinet type of government, for the powers of the nation were concentrated in the National Council. In actual operation however, the government was not strictly of such a type. First, the cabinet, which is but a committee of the legislature and which ought to play the leading part in legislation and administration according to the theory and practice of the cabinet system, was not given such constitutional powers. Second, the Constitution was silent as to the right of cabinet ministers to vote in the National Council, though they might attend its sittings and participate in debate. Third, while the National Council possessed the right of passing votes of non-confidence, the executive was not given the power of dissolving the Council, a necessary means of solving differences between the executive and the legislature. Finally, the lack of a clear division of powers and responsibilities between the Premier and the President made the system neither presidential nor cabinet. For according to the former, the chief executive is not a mere decoration or figurehead, while in the case of the latter the Premier together with the cabinet is the real executive.

As to the distribution of powers between the nation and the provinces and the organization of provincial governments, the Constitution was characterized by a conspicuous omission.

Despite its shortcomings, the Constitution was framed under a strong democratic impulse, which found expression in the theory of popular sovereignty and the principle of equal representation in the National Council for all the provinces, Inner and Outer Mongolia, and Tibet.<sup>1</sup>

<sup>1</sup> See arts. 2 and 18.

REFORMS OTHER THAN CONSTITUTIONAL DURING  
THE FIRST DECADE OF THE 20TH CENTURY*(a) Educational*

The failure of the Manchus to carry out constitutional reforms during the first decade of the twentieth century should not lead one to think that no reforms whatsoever had been attempted. The years immediately following the Sino-Japanese War, more particularly those after the Boxer Uprising, were years of change. With a repentant heart the Manchus inaugurated one reform after another, looking for a better day—the day of national regeneration. Educationally, the old system of examination was abolished by an imperial decree on September 1, 1905.<sup>1</sup> In its place a system of public schools was devised, consisting of primary schools for elementary education, middle schools for secondary education and colleges for higher education. This educational movement received a new impetus in 1908 when the American Government decided to refund to China a portion of the Boxer indemnity, which since that date has been used for educational purposes.<sup>2</sup> Women's education was first started in the imperial palace upon the approval of the Empress Dowager. The example was soon followed by other princesses and provincial authorities. The work of the missionary schools in this movement of intellectual renaissance should also be mentioned since many a prominent man now in government service was once a student of such institutions and since the aim of these schools is to train men and women to be not only intellectually fit for public service but also capable of constructive moral leadership.

*(b) Judicial*

In the realm of law and the courts reforms were also initiated. In 1902 a Commission on Juridical Reform

<sup>1</sup> Williams: op. cit., p. 444.

<sup>2</sup> Ibid., pp. 444–445.

was appointed with Dr. Wu Ting-fang, former Chinese Minister at Washington, a man of known competency in legal subjects as one of the Commissioners. Three years after, the Commission submitted a report recommending the abolition of certain cruel forms of punishment and urging the inauguration of judicial reforms which it intimated were necessary for the termination of consular jurisdiction in China. Accordingly, the sentences to a "lingering death" and to deportation to the frontier provinces were abolished. Penalties such as branding, beating with the bamboo and wearing the wooden collar were replaced by imprisonment at hard labor. Accompanying the reform of the penal code was the establishment of new prisons. The first model prison was established at Tientsin by the Viceroy Yuan Shih-kai, with night schools for the education of the younger inmates, and workshops for all to learn trades. Law schools were established to train qualified judges for the new independent courts.

### (c) *Currency*

Along with the educational and judicial reforms was the reform of currency. That the monetary system in China is complicated to the extreme is so well-known a fact that no elaborate explanation is needed. Suffice it to say, there was, in the first place, no recognized standard of value which was to serve as the national medium of exchange.<sup>1</sup> The tael, of which there were more than seventy varieties and which was supposed to be the standard was not a coin, but represented a weight of silver. Moreover, the value of the tael, which is determined by its fineness varies from place to place. Second, the different coins in use, such as silver dollars, silver dimes, single and double, and copper cash, bear no fixed relation to one another.<sup>2</sup> This absence of a fixed value, together

<sup>1</sup> Vinacke: *A History of the Far East in Modern Times*, p. 255.

<sup>2</sup> *Ibid.*, p. 256.

with constant fluctuation in exchange value because of diverse local conditions, has given rise to such a complexity that the monetary system puzzles even the Chinese.

In the treaty of 1903 with the United States<sup>1</sup> a provision was incorporated whereby China agreed to establish a uniform currency so as to facilitate commercial intercourse between the two countries. An effort was made in this direction in 1905, but it did not succeed. A more definite move was made in 1910, when the Chinese Government approached the American Banking Group for a loan of \$50,000,000 for the proposed reform.<sup>2</sup> The preliminary agreement was signed on October 27, 1910.<sup>3</sup> To carry out its traditional policy of the open door and to secure international coöperation, the American Government extended the invitation to Great Britain, France and Germany to participate in the loan, which including the United States constituted the quadruple syndicate or the "Old Consortium." The final agreement was signed on April 15, 1911 for a loan of \$10,000,000.<sup>4</sup> Owing to the Revolution in October the loan was not floated, though an advance of 3,100,000 Shanghai taels in the form of sterling treasury bills was delivered to the Chinese Government.<sup>5</sup>

#### (d) *Social*

Social reforms were also attempted. By the imperial decree of 1910 slavery, an ancient heritage, was abolished. Opium-smoking was prohibited by another edict in 1906, despite the enormous income (about \$15,000,000 United States currency a year<sup>6</sup>)

<sup>1</sup> Williams: *op. cit.*, p. 454.

<sup>2</sup> Bau: *Foreign Relations of China*, p. 64.

<sup>3</sup> MacMurray: *Treaties and Agreements with and Concerning China, 1911/2*.

<sup>4</sup> *Ibid.*

<sup>5</sup> *Ibid.*

<sup>6</sup> Williams: *op. cit.*, p. 458.

derived from the tax on the sale of the drug. Foot-binding was forbidden and no woman with bound-feet was permitted to enter school.

These reforms and others<sup>1</sup> marked only the beginning of China's endeavor to free herself from the shackles of feudalism. In the process of national rebuilding, she is experiencing now a change unprecedented in her history.

<sup>1</sup> For the various reforms undertaken by the Manchus see Tyau's, *China Awakened*.

## CHAPTER III

### CONSTITUTIONAL DEVELOPMENT SINCE THE REPUBLIC

IN the previous chapter a brief survey has been made of the nature and causes of the constitutional movement and of its stages, leading to the outbreak of the Revolution and the establishment of the Republic. Mention has also been made of the problems with which the Republic was confronted and the nature and contents of the Provisional Constitution. It is the purpose of this chapter to continue the story of China's constitutional development during the Republican period, dealing with the regime of Yuan Shih-kai, 1912-1916, the constitutional restoration of 1916-1917, the civil wars of 1917-1928 and the political reconstruction begun in 1928. This development culminated in the installation of the "five-power" government. The "military stage" came to an end in 1928. The nation's program is chiefly one of reconstruction, which engages the most serious attention of those who are in power.

#### THE REPUBLICAN GOVERNMENT UNDER THE PROVISIONAL CONSTITUTION

The Provisional Constitution provided for a Provisional President, a Vice-President and a Cabinet to constitute the executive; a National Council of the unicameral type to serve as the legislature; and a system of independent courts (the organization of which was to be determined by law) to form the judiciary. According to article 53, the National Council



was to be superseded by a National Assembly, which was to be convened within ten months after the promulgation of the Provisional Constitution, and the Organization and Election Laws of which<sup>1</sup> were to be decided by the National Council. On August 10, 1912, these laws of the Assembly were promulgated. After the completion of its election in January 1913, the Assembly, consisting of the Senate and the House of Representatives, was convoked on April 8th of the same year. In October it elected Yuan Shih-kai as the first President of the Republic. Instead of harmoniously coöperating with each other, however, the National Assembly and the executive soon plunged into a conflict which resulted in the dissolution of the former in 1914 and the monarchical *coup* of Yuan Shih-kai in 1916, which will soon be dealt with.

Although the Provisional Constitution was mute regarding the provinces, it is within reason to assume that the system was intended to be unitary as under the old order. Hence, the powers of the provincial governments were delegated and defined rather than inherent and original. But the actual situation in the provinces remained unimproved despite the Revolution. Instead of rendering their common allegiance to the central government, the provinces were at the mercy of the militarists who maintained large armies, preyed upon the provincial treasuries and governed as despotic monarchs. In governmental structure, each province had a civil governor, a military governor and a legislature. But the provincial legislatures were only shortlived on account of their dissolutions by Yuan Shih-kai on March 1, 1914.

The outlying territories, such as Mongolia and Tibet, being integral parts of the Republic, were given

<sup>1</sup> *China Year Book, 1914*, p. 464, etc.

representation in the National Council.<sup>1</sup> But no effective measures were taken to bring them into close contact with the central authorities.

## I THE PERIOD OF YUAN SHIH-KAI 1912-1916, THAT OF CENTRALIZATION

### *His Conflict with the Legislature*

It was with Yuán Shih-kai, leader of the Northern Military Party, in the executive chair and the Kuomintang or Nationalist Party constituting the dominant group<sup>2</sup> in the legislature in opposition to the executive, that the Republic commenced its career. Even before the convocation of the National Assembly and the election of Yuan as President of the Republic, Yuan, the provisional chief executive and the National Council, the provisional legislature had already been in friction. In the matter of cabinet organization, was sounded the first discordant note. Yuan wanted to give a cabinet of talents disregarding party affiliations, while the National Council insisted on constructing it on a strictly party basis. In addition, the former maintained that the cabinet should be responsible to him, while the latter asserted the doctrine of parliamentary supremacy. Besides, two southern leaders, upon a charge of rebelling against Yuan's

<sup>1</sup> Vinacke: *Modern Constitutional Development in China*, pp. 141-147, "The Provinces, Inner and Outer Mongolia, and Tibet shall each elect and depute five members to the National Council, and Ch'inghai (Kokonor) shall elect one member" (art. 18 of the Provisional Constitution). According to the Organization and Election Laws of the National Assembly Mongolia was to have 27 delegates in the Senate, Tibet 10 and Kokonor 3. The representation in the House of Representatives was the same.

<sup>2</sup> The distribution of seats in the House of Representatives and the Senate was as follows:

<i>Parties</i>	<i>House of Representatives</i>	<i>Senate</i>
Kuomintang . . . . .	269 . . . . .	123
Kunghotang . . . . .	120 . . . . .	55
Tungyitang . . . . .	18 . . . . .	6
Minchutang . . . . .	16 . . . . .	8
Ambiguous . . . . .	137 . . . . .	38
Indefinite . . . . .	26 . . . . .	44
TOTAL	586	274

government, were executed in the summer of 1912 after a summary trial by court martial. In the eyes of the southerners this action was arbitrary and undemocratic. Furthermore, a few days before the election of the National Assembly, Sung Chiao-jen, a prominent member of the Nationalist Party was assassinated at the Shanghai railway station, and it was suspected that the murder had been plotted by Yuan Shih-kai. Again, the question of the drafting of the permanent constitution precipitated another dispute. Following the example of the framers of the Provisional Constitution, the National Council attempted to curtail the powers of the President through constitutional means. Accordingly, it stubbornly refused to let any other institution share in the drafting of the permanent constitution except the National Assembly alone. With the support of the militarists in the provinces, however, Yuan endeavored to remove this constitution—making power from the legislature. Such a removal would, of course, involve a change of the Provisional Constitution, as the power of framing the permanent constitution was vested in the National Assembly. Finally, on April 28, 1913 in the matter of the Reorganization Loan of £25,000,000 Yuan Shih-kai and the National Assembly came into serious conflict. The latter, exercising its constitutional right of controlling the nation's purse, refused to approve the loan, fearing that Yuan might use it for other purposes than those he openly declared. On the other hand, Yuan contended that the loan had been previously sanctioned by the National Council (December 1912), and therefore, it was not necessary to secure the approval of the Assembly. In short, it was the construction of the cabinet and the question of cabinet responsibility, the execution of the two southern leaders, the assassination of Sung Chiao-jen, the contraction of the Reorganization Loan and the drafting of the permanent constitution that kept

Yuan Shih-kai and the National Council, later the National Assembly wide apart, and when their differences assumed gigantic proportions they resorted to military force.

### *The Second Revolution of 1913*

Different from the one in 1911, which aimed at the overthrow of the Manchus, the second Revolution in the summer of 1913 was against the regime of Yuan Shih-kai, which to many of the liberals was intolerable. The spark that kindled the fire was the removal from office of Li Lieh-chun who was the military governor of Kiangsi and a member of the Nationalist Party. The same fate was suffered by two other military governors in Anhwei and Kwangtung respectively, who were also members of the Nationalist Party. The southerners thought such removals would lead to the final destruction of their power, and doubtless, they were so intended. In self-defence, therefore, these dismissed governors and others raised a common standard of revolt against the chief executive. However, Yuan's position was too strong to be shaken. In the first place, he was financially better equipped than the South. Secondly, the general public was not sympathetic with the cause, if not directly opposing it.<sup>1</sup> With these disadvantages the movement collapsed within a few months.

The failure of the second Revolution meant two things. On the one hand, it put a check, temporarily at least, upon the activities of the revolutionists, since any resort to force would be unwise if not futile. On the other hand, it made Yuan feel that the Nationalists were after all easy to deal with, and that being in unchecked ascendancy he could do what he desired.

<sup>1</sup> Bau: Modern Democracy in China, p. 24.

*The Election of Yuan Shih-kai As the  
President of the Republic*

Though the Nationalist military governors were temporarily ousted from office, still the National Assembly was dominated by the Nationalist Party. In the Senate it occupied 123 seats out of a total of 274 and in the House of Representatives 269 out of 586, both being the largest number.<sup>1</sup> It was with this parliamentary opposition that Yuan Shih-kai had to deal before his position could become firm and secure. Since its opening in April the Assembly appointed a committee consisting of an equal number of members from both chambers to work on the draft constitution. Yuan, on the other hand, proposed that it immediately proceeded to elect the President rather than undertake the tedious work of drafting the permanent constitution. His argument was that there was imminent danger of foreign intervention and that in order to secure the recognition of the new Government by the European powers as well as Japan, such a step would be absolutely necessary. Through intimidation and bribery, Yuan not only succeeded in persuading the Assembly to elect the President but he also got himself elected. This was accomplished with the support of the Progressive Party (Chinputang) which passed the Presidential Election Law<sup>2</sup> in the Assembly in the early part of October. The election was held on the 6th of the same month, and on the third ballot Yuan was elected. On the next day Li Yuan-hung was elected as the Vice-President.

*Yuan's Deviation from the Provisional Constitution*

Having silenced his political rivals by resorting to summary executions, suppressed the Revolution of 1913

<sup>1</sup> See footnote No. 2, p. 58.

<sup>2</sup> *China Year Book, 1914*, pp. 494-495.  
Vinacke: op. cit., p. 157.

by superior military force, and won the presidential election through intimidation and bribery, Yuan had at least temporarily cleared the opposition. But so long as the Nationalist Party dominated the National Assembly, he must continue to struggle for power. Moreover, the permanent constitution was in the process of making. If it should be adopted in the spirit of the Provisional Constitution, he would be tied hand and foot and would be the type of executive who "neither reigns nor governs." Considerations of this kind drove him to take action first. Modifications to the draft constitution were first introduced with a view to eliminating some of the provisions restricting the authority of the President. These were rejected by the drafting committee. Then the President sent representatives to participate in the discussion with the committee, but they were refused a hearing. By October 26 the committee completed its work and before being carried into effect the draft constitution only required the action of the Assembly. In essence, the document created a cabinet government, with a permanent parliamentary committee to control the executive when the legislature should be in recess. Yuan objected to the limitation of his authority, and after failing to secure the proposed modification, he ordered the dissolution of the Nationalist Party throughout the whole country (November 1, 1913) and at the same time expelled the Nationalists from the National Assembly on the ground that the Party was a "seditious organization." The formal dissolution of the Assembly took place on January 10, 1914. It must be remembered, however, that according to the Provisional Constitution the President possessed no right to dissolve the legislature. The drastic action of the President was, therefore, a violation

of the supreme law of the land.<sup>1</sup> With the dissolution of the legislature died the draft constitution.

Yuan's supremacy was now unchallenged. He could pursue whatever course of action he preferred. But he so skillfully handled the situation that what he did was in observance of the forms of legality, thus avoiding the criticism of the radicals as well as of the general public. Donning the garb of republican constitutionalism, he summoned on December 26, 1913 a Political Council consisting of delegates appointed by himself or the Provincial authorities to serve as his advisory council. Upon its convocation it recommended two measures: first, the formal dissolution of the National Assembly, second, the creation of a constitutional council for the amendment of the Provisional Constitution. In accordance with these recommendations, the National Assembly was dissolved, and laws were drawn up governing the organization of the Constitutional Council. This Council, as it was finally organized, consisted of fifty-six elective members: two from each province, four from the city of Peking, eight from Inner Mongolia, Outer Mongolia, Tibet, and Turkestan, and four representing the National Chamber of Commerce.

*The Constitutional Compact, the So-called Revised Provisional Constitution*

The Constitutional Compact,<sup>2</sup> the product of the Constitutional Council, was promulgated on May 1, 1914. Contrary to the Provisional Constitution it was an instrument deliberately worked out in favor of the executive. As a whole, it was characterized by two outstanding features.<sup>3</sup> First, it limited "the

<sup>1</sup> According to Dr. Bau, Yuan's dissolution of the National Assembly was a deviation from the Provisional Constitution, but the Rebellion of 1913 was a violation of the spirit of the Nanjing Settlement. Bau: op. cit., p. 29.

<sup>2</sup> *China Year Book, 1916*, pp. 437-443.

Hornbeck: *Contemporary Politics in the Far East*, pp. 52-56.

Vinacke: op. cit., pp. 165-170.

<sup>3</sup> Bau: op. cit., p. 30.

competence of the legislature" in the exercise of its powers. Second, it adopted the presidential system in place of the cabinet, thus giving the executive independent powers without the interference of the legislature. These changes, though radical, were but the logical result of the ascendancy of Yuan and the defeat of the Nationalist Party.

In content, the first chapter defines the location of sovereignty and the territory of the Republic.

The second is a bill of rights.

The third relates to the President who was now given extensive powers: the dissolution of the legislature with the concurrence of the Council of State, the initiation of legislation, the issuance of ordinances, the appointment and dismissal of civil and military officers, the declaration of war and the making of peace, the conclusion of treaties (certain treaties with the concurrence of the legislature), the declaration of a state of siege and the grant of pardon. In short, the President "combined in himself all the powers of the government" and "was responsible to the nation."

The fourth chapter deals with the Legislature, the Li-fa-yuan. Its powers were now restricted so that it might not hold the President responsible for his political acts as the National Assembly could do under the Provisional Constitution. Even in the field of legislation its authority was limited in view of the fact that the opposition of the President might not be overcome in the case of bills which the President thought "would greatly endanger and harm, either the internal administration of the state or its foreign relations" provided that the Council of State should concur. But the Legislature still controlled the finances of the state. It was given the power to approve the nation's estimates and "measures relating to the assumption of public debts, and to the contracting of other liabilities to the charge of the National



Treasury." Moreover, it could institute impeachment proceedings against the President, "should he make an attempt against the state," though the requirement was rather cumbersome, being the approval of a majority of three fourths, of a quorum of four fifths of the total number of its members.

The fifth chapter deals with the national administration, in which the President as chief, was to be assisted by a Secretary of State. National administration was to be carried on by the following Departments: Foreign Affairs, Interior, Finance, Army and Navy, Justice, Education, Agriculture and Commerce, and Communications. The Secretary of State and the Heads of the Departments were entitled to sit and speak in the legislature. They might be impeached by the Board of Censors and judged by the Ping-cheng-yuan, a sort of administrative court.

The sixth chapter is on the courts of law. Judges were to be appointed by the President and were to have a permanent tenure. The organization of the courts was to be determined by statute.

The seventh chapter makes provision for a single chamber legislature, the Council of State, the organization of which was to be decided by the Constitutional Council. The Council of State was, however, only intended to be an advisory body to the President, and its members were all to be nominated by him. It was to be superseded by a legislature to be composed of elective members. As a matter of fact, it acted as the legislature throughout 1914 and 1915.

The eighth chapter relates to state finance. A Continuing Expenditure Fund and a Reserve Fund were provided for. Certain estimates were not to be subject to legislative rejection, except with the concurrence of the President. The budget of the previous year might be continued in case of failure to pass the new budget by the Legislature when the new fiscal year should begin.

The ninth chapter deals with the drafting of the permanent constitution. A Constitution Drafting Committee was to be created, consisting of not more than ten members elected by the Council of State. The Constitution was to be adopted by a National Convention, the organization of which was to be determined by the Constitutional Council.

The last chapter is on the amendment of the Constitutional Compact, which required a majority of three fourths, of a quorum of four fifths of the total number of members of the legislature, upon the proposal of the President or the two thirds' proposal of the Legislature.

*The Presidential Election Law and the Organization  
Law of the Legislature (Li-fa-yuan)*

The Constitutional Compact was not the only work of the Constitutional Council. Two others of no less significance—the Presidential Election Law<sup>1</sup> and the Organization Law of the Legislature<sup>2</sup> were also its products. The Legislature which was to replace the Council of State was to be a unicameral chamber consisting of 275 members to represent the provinces, special administrative districts, and the outlying territories. The method of indirect election was to be employed for the provinces and the special administrative districts. For the rest, the direct method was to be used. The qualifications of the electorate were made extremely high, so that only a small group was entitled to vote.

The Presidential Election Law was unique. The President was to be elected by an electoral college to be composed of 100 members—50 from the Council of State and 50 from the Legislature. The term of the

<sup>1</sup> Hornbeck: op. cit., pp. 57-58.

Vinacke: op. cit., p. 173.

<sup>2</sup> Ibid., pp. 58-62.

Ibid., pp. 171-172.

President was ten years with eligibility for reelection. Candidates for the presidency were to be nominated by the President—three of them altogether.

With a legislature devoid of any truly representative character and a Presidential Election Law giving the President an almost life tenure, Yuan had actually instituted a personal government setting at naught the wishes of the people. The organ of which he made use was the Constitutional Council.

### *The Monarchical Movement of 1916*

#### (1) THREE FACTORS COUNTED FOR YUAN'S STRENGTH

In spite of Yuan's radical constitutional changes, there was little positive opposition to him except from the members of the Nationalist Party and the few other advocates of popular government. While this was largely due to the indifference of the masses, the gentry and the literati, three other important factors may be mentioned.<sup>1</sup> The first was that the Abdication Edict, which authorized Yuan to "organize with full powers a provisional republican government, and confer with the Republican Army as to methods of union," gave him a legal right to reorganize the government. So long as he should maintain the republican form of government, he could introduce changes, however radical they might be, to the Provisional Constitution. The second was that the Parliament which wielded in itself extensive powers had failed to formulate constructive policies. Its extinction, therefore, did not arouse much opposition. The third was that the changes brought about in the machinery of the central government had not been keenly felt by the provincial authorities and the masses, with whom the central government had little close contact.

Surrounded on all sides by men of his own image, supported by the militarists who were in control of

<sup>1</sup> Vinacke: *op. cit.*, pp. 175-178.

the provinces and aided by a subservient legislature, the Council of State, which was ready to run his errands, Yuan was led to think that the time was ripe for a *coup*. But in effecting a change such as the restoration of the monarchy with himself as Emperor, he was not unmindful of the grave consequences that might ensue, should things be done in too great a hurry. Deliberately therefore, he adopted round-about methods in realizing his ambition.

## (2) THE TWENTY-ONE DEMANDS AS A PRETEXT FOR CHANGING THE FORM OF THE STATE

An opportune moment came when China was confronted with an unprecedented crisis in her modern history, namely, the presentation by Japan on January 18, 1915 of the Twenty-One Demands which resulted in two treaties and thirteen exchanges of notes<sup>1</sup> and were characterized by the policy of "territorial expansion," "economic exploitation," "political control," "paramount influence" and an "Asiatic Monroe doctrine."<sup>2</sup> As a result of this wanton assault on China's sovereignty and independence, the adherents of Yuan expressed their doubts as to the practicability for China to continue the Republic and their desire for a change of the form of the State, which they thought might preserve peace and order at home and rescue China from the danger of foreign intervention. Of course, the 1915 demands were simply made an excuse, for prior to their presentation plans for a monarchical restoration had already been whispered within the circle of Yuan's intimate associates.

## (3) THE ACTIVITIES OF THE MONARCHISTS

In order to propagate the gospel of monarchism, a Chouanhui or Society for the Preservation of Peace

<sup>1</sup> Wood: The Treaties and Notes of 1915.

<sup>2</sup> Bau: Foreign Relations of China, pp. 193-254.

was organized of which Yang Tu, a member of the Council of State, was the dominant spirit. In the following remark he defended himself as a monarchist:

"A true Republic must be conducted by many people possessing general education, political experience and a certain political morality. . . . The majority of our people do not know what the Republic is, nor do they know anything about a Constitution nor have they a true sense of equality and freedom. . . . Ambitious men hold that any person may be president and if they cannot get the presidency by fair means of election they are prepared to fight for it with the assistance of troops and robbers. The second revolution is an illustration of this point.

"If China wishes to save herself from ultimate disappearance from the face of the earth, first of all she must get rid of the republic. Should she desire wealth and strength, she must adopt a constitutional government. Should she want constitutional government she must first establish a monarchy.

"At every change of the president there will be riot and civil war. In order to avoid the possibility of such awful times place the president in a position which is permanent. It follows that the best thing is to make him Emperor."<sup>1</sup>

On the surface Yuan posed as an ardent defender of the Republic, as he was bound to do by the oath which he took at his presidential inauguration. In fact, he encouraged the activities of the Society and controlled the whole movement.

#### (4) DR. GOODNOW'S MEMORANDUM

While the cause of monarchism was making headway, Dr. Goodnow, Constitutional Adviser to the President, paid a visit to China, and, in response to a request of the government, submitted a memorandum in which he expressed his views on the question of the form of the State. After a careful review of political institutions in the West and a study of the conditions

<sup>1</sup> Putnam Weale: *The Fight for the Republic in China*, pp. 150-172.

Bau: *Modern Democracy in China*, pp. 35-36.

in China, Dr. Goodnow concluded that a monarchy was better suited to China than a republic. Thus he says:

"The experience of the South and Central American countries would seem to inculcate the same lessons which may be derived from the experience of the United States and France. These are first—That the difficult problem of the succession to executive power in a republic may be solved by a people which has a high general intelligence due to the existence of schools where general education may be obtained and which has learned to exercise political power through participation in the affairs of government; and second—That little hope may be entertained of the successful solution of the question of Presidential succession in a country where the intelligence of the people is not high and where the people do not acquire political wisdom by the sharing in the exercise of political power under some form of constitutional government.

"China is a country which has for centuries been accustomed to autocratic rule. The intelligence of the great mass of its people is not high, owing to the lack of schools. The Chinese have never been accorded much participation in the work of government.

"... The great problem of the presidential succession would seem still to be unsolved. The present arrangement cannot be regarded as satisfactory. . . .

"... It is of course not susceptible to doubt that a monarchy is better suited than a republic to China. China's history and traditions, her social and economic conditions, her relations with foreign powers all make it probable that the country would develop that constitutional government which it must develop if it is to preserve its independence as a state, more easily as a monarchy than a republic."<sup>1</sup>

But he further pointed out that before the restoration of the monarchy three conditions must be observed. First, the change as contemplated must not be opposed by the people and the foreign powers. Second, the rule of succession must be so fixed that there would be no uncertainty as to the successor. Third, provision must be made for the development of constitutionalism.

<sup>1</sup> Hornbeck: *op. cit.*, pp. 413-424.

Bau: *Modern Democracy in China*, pp. 37-40.

## CONSTITUTIONAL DEVELOPMENT SINCE REPUBLIC 71

### (5) THE CONVENTION OF CITIZEN'S REPRESENTATIVES IN FAVOR OF A MONARCHY AND YUAN SHIH-KAI AS EMPEROR

It was on the basis of this memorandum that the Chouanhui agitated for the restoration of the monarchy. With the support of the militarists it petitioned the Council of State to consider the question of the form of the State. The Council, being itself sympathetic with the movement, recommended that the National Convention which was to ratify the permanent constitution as provided in the Constitutional Compact and which was to be convened later in the fall of 1915, should take up the question of monarchical restoration. Inasmuch as the date fixed for the convocation of the National Convention was rather remote, the Chouanhui requested the Council to proceed to organize another body to consider the question at an earlier date. Accepting the request, the Council passed on October 6th, the law governing the organization of the Convention of Citizen's Representatives.<sup>1</sup> The elections to the Convention which were completed in December were so manipulated that only those who were monarchical in their sympathies were chosen. On December 11, it was announced by the Council of State that the ballot was (1993 votes out of 2043) in favor of a monarchy and of Yuan Shih-kai as Emperor. The date fixed for the enthronement was February 6, 1916.

### (6) OPPOSITION TO MONARCHICAL RESTORATION AND THE DEATH OF YUAN

Although the reversion to monarchy was made only in accordance with the will of the people as the monarch-

<sup>1</sup> *China Year Book, 1916*, pp. 444-446.

The Convention was to be composed of 1834 representatives elected from the provinces, and special administrative areas, 32 from Inner and Outer Mongolia, 12 from Tibet, 6 from Ch'inghai, 24 representatives of the Manchu, Mongolian and Chinese Banners, 60 elected by the Chamber of Commerce, 30 representatives of the learned scholars, and 20 representatives elected by those who had rendered meritorious service to the country.

ists maintained, opposition was bound to arise. In December the young general Tsai Ao of Yunnan took the initiative in raising the standard of revolt. In February Kweichow and Kwangsi followed suit. In face of this strong opposition, Yuan postponed his enthronement. When he found even that could not appease the revolting provinces, he cancelled the monarchy on March 22. In spite of this concession opposition did not subside, and by April, Chekiang and Kwangtung joined the movement against him. At last, Yuan was compelled by force of circumstances to accept the cabinet system with Tuan Chi-jui as Secretary of State so that the legislature, the Li-fa-yuan, which was yet to be organized would be the supreme institution of the nation.

This arrangement was acceptable to the North but not to the independent provinces. They demanded the retirement of Yuan and would not be satisfied with anything less than that. In May a *de facto* government was set up in Canton with Vice-President Li Yuan-hung as its President. Again, China was divided and civil war seemed to be imminent. At the instance of Feng Kuo-chang, Ni Shih-chung and Chang Hsun a conference was arranged in Nanking so that the North and the South might talk over plans of settlement. But the conference failed to accomplish its purpose, mainly due to the refusal of the South to send its delegation. At this troubled moment death overtook Yuan (June 6), thus bringing to an end this constitutional issue without plunging China into civil war.

## II PERIOD OF CONSTITUTIONAL RESTORATION 1916-1917

### *The Issue Between the North and the South and Its Settlement*

The death of Yuan Shih-kai automatically eliminated the monarchical issue from the stage of politics



but left others which arose out of his dictatorial regime unsolved. During his closing days, as it will be recalled, Tuan Chi-jui was appointed Secretary of State (premier) and authorized to organize a responsible cabinet. In spite of his opposition to the monarchical movement, Tuan's views regarding the distribution of powers between the executive and legislative departments were similar to those of Yuan. Hence, he maintained that the Constitutional Compact should stand rather than the Nanking Provisional Constitution on the ground that the latter instrument put an unnecessary restriction upon the executive and was unsuited to the needs of China. In addition he discredited the National Assembly on account of its obstructive policies and suggested that a representative body be called to work out a new election law for the purpose of bringing into existence a new parliament. On the other hand, the South retorted that the Nanking Constitution was the supreme law of the land before the adoption of the permanent constitution and that the Constitutional Compact was illegal, and insisted on the restoration of the Nanking Constitution and the reconconvocation of the National Assembly.

At this critical moment Li Ting-hsin, the Commander of the Yangtse Fleet, who held the balance of power, threw in his lot with the South. He brought pressure to bear upon the North by declaring independence from the Peking (now Peiping) naval authority. On June 29 a Presidential Mandate was issued, providing for the restoration of the Nanking Constitution and the convocation of the old Parliament.<sup>1</sup> Other mandates were issued whereby all laws regarding the Li-fayuan and the Convention of Citizen's Representatives were cancelled and the Council of State and the Censorate were abolished. The period from the unseating of the Kuomintang members from the National

<sup>1</sup> *Far Eastern Review*, October, 1916, p. 177.

Assembly on November 4, 1913 to its reconconvocation which was fixed on August 1st, 1916 was considered as an interregnum. Upon the satisfaction of their demands, the seceding provinces, together with the independent navy, cancelled their independence.

*The Accession of Li Yuan-hung to the Presidency  
and the Election of Feng Kuo-chang  
As Vice-President*

On June 7, the day after the death of Yuan, Li Yuan-hung, the Vice-President, was promoted to the presidency. Because of his "constancy of character and honesty of purpose" rather than his "brilliancy of mind or of achievement" he was welcomed by both sections of the country. His accession to the presidency necessitated the electing of a vice-president, which the two chambers of the National Assembly sitting as a National Convention proceeded to do on October 30. On the first two ballots no one was elected, the requirement for the election according to the Presidential Election Law of 1913 being a three fourths majority of a quorum of two thirds of the total membership of the Assembly. On the third ballot, however, General Feng Kuo-chang, who secured a majority vote, was declared elected. The election of Feng as Vice-President by the National Assembly, which secured his support of the government, was a wise action in view of the strategic position which he held in the lower Yangtse.

*The Conflict Between Premier Tuan Chi-jui  
and the National Assembly*

But the crisis was by no means over. Tuan Chi-jui, the Premier and the real executive, was of the Northern Military Party and the National Assembly was, as of old, dominated by the Nationalist Party.

With the executive represented by one party and the legislature by another hostile to each other, the situation was as complicated as in 1913, and as a matter of fact, the old scenes were repeated, except that this time the center of politics was in the person of the Premier, not the President.

One of the outstanding issues concerned the post of Minister of Foreign Affairs. Tang Shao-yi, a member of the Nationalist Party, was first appointed but was rejected by the militarists, who resigned in chagrin. Then Lu Cheng-hsiang and Wang Ta-hsien were nominated but were not acceptable to the National Assembly. Finally, the appointment of Wu Ting-fang, the aged diplomat, was agreed upon by both Houses.

Ill-feeling was enhanced by constant interpellations addressed to the government with reference to its administrative work and particularly its loan policy.

Finally, owing to the question of Declaration of War against Germany and the draft of the permanent constitution, the National Assembly experienced another dissolution which gave rise to a civil war lasting for more than a decade.

*The Question of Declaration of War Against  
Germany and the Second Dissolution  
of the National Assembly*

Upon its reconconvocation on August 1st, 1917, the Parliament lost no time in setting itself to the work of framing the permanent constitution. The Nationalist Party, remembering its past experiences with Yuan, whose dictatorial regime was instituted largely through his control of the provinces, was in favor of provincial autonomy, the election of the provincial governors by the legislative assemblies and the inclusion of the provincial system in the constitution. The Progressive Party which supported the executive, maintained that

the provinces should be mere administrative areas, that the governors should be appointed by the President and that the provincial system should be regulated by statutes.

Another point of difference concerned the question of making Confucianism the state religion. The conservatives were of the opinion that a provision should be inserted to that effect. Others felt, however, that it was unwise to do so, though they admitted that Confucianism should be taught in the schools.

In the midst of this constitutional struggle the question of Declaration of War against Germany was brought to the fore. Since February 1917 Germany committed herself to the reckless use of submarines against which China sent her an ultimatum on May 9. Receiving no reply from Germany, the Cabinet proceeded to consider the next step, that of severing diplomatic relations with her. Here President Li and Premier Tuan clashed. The former, on the ground of his constitutional right of declaring war and making peace, complained that his authority in conducting foreign relations had been ignored. Tuan, on the other hand, maintained that as the head of a responsible cabinet he had not overstepped his authority. In chagrin he tendered his resignation and left for Tientsin. However, through the good offices of his friends, he resumed his work.

On March 14 the formal severance of diplomatic relations with Germany took place. In order to take the next logical step, the declaration of war, the premier commenced his negotiations with the allied powers. He proposed, *inter alia*, a suspension of the payments of the Boxer Indemnity, a revision of the tariff provisions in favor of China, and a change of some of the provisions in the Protocol of 1901. In return for all this, China was to be responsible for the supply of primary materials and a labor force.

Unfortunately, while the War Bill was undergoing

discussion in the Parliament, a mob demonstration agitating for war occurred outside the Parliamentary building. Tuan was charged with having connections with this disturbance which aimed at intimidation, and his resignation was demanded by the opposition. Though all the rest of the Cabinet resigned, Tuan refused to do so. In the meantime, the militarists who favored war, came to the support of the Premier. Instead of centering their attention on the question of Declaration of War, they changed the issue by attacking the draft of the permanent constitution. Criticism was brought against the following provisions in particular: that the House of Representatives might not be dissolved without the consent of the Senate, that the President could appoint the Premier without the countersignature of the Cabinet Ministers and that any resolution passed by the two Houses of Parliament should have the force of law. In support of the action of the military governors, the Progressive Party pointed out six points in the draft constitution which they thought would tend "to create disturbances and revolutions." These are "(1) The system of Parliament has not been improved and its organization has not been definitely fixed; (2) When any decision of the Houses is returned by the government for reconsideration the ordinary method of voting will be employed to make a final decision; (3) the mandate dismissing the Prime Minister does not require the countersignature of Cabinet Ministers; (4) the partiality shown in the provisions of the right of 'vote of want of confidence' and that of power to dissolve the House of Representatives; (5) the bills passed by the Houses shall become Laws of the Nation; (6) the provincial system has been hastily provided for in the constitution."<sup>1</sup> Since the draft was the work of the Parliamentary Constitutional Committee, the military governors demanded

<sup>1</sup> *Far Eastern Review*, October, 1916, p. 246.

*Ibid.*, July, 1917, p. 529.

the dissolution of the Parliament so as to eradicate the evils at the source. Instead of accepting their advice, President Li Yuan-hung dismissed Premier Tuan on May 23 and appointed Wu Ting-fang as Acting Premier. In the meantime, the military governors assembled in Hsuehchow, ostensibly to prepare themselves for joint action in case of necessity. The month of May witnessed the secession of Fengtien, Chihli, Shantung, Chekiang, Fukien, Anhwei and Hupeh from the central authority. On June 2, the military governors of the seceding provinces established a provisional military government at Tientsin. Finding no way to solve the difficulty, President Li appealed to General Chang Hsun for assistance and summoned him to the capital. The latter accepted the invitation, but to the surprise of the President he urged the dissolution of the Parliament. On June 13, the President, under the pressure of necessity, issued a mandate dissolving the Parliament, in the hope of preventing civil war. Thereupon the independence of the revolting provinces was cancelled.

### *Monarchical Coup of General Chang Hsun July 1917*

No sooner had the conflict between the Premier and the National Assembly been brought to an end than there took place the monarchical *coup* of Chang Hsun. On July 1st this conservative-minded general astonished the nation by restoring to the throne the Emperor Hsuan Tung, who abdicated in 1912. Unable to handle the situation, President Li took refuge in the Japanese Legation and asked Vice-President Feng Kuo-chang to take charge of his Presidential duties. In the meantime Tuan Chi-jui was appointed Premier and through his efforts the monarchical movement was suppressed within a few days. On July 14 President Li tendered his resignation subsequent to

which Feng was formally inaugurated as President. Returning to China's relations with Germany, the Declaration of War was made on August 14, 1917.

### III THE PERIOD OF CIVIL WARS, 1917-1928

#### *The Southern Military Government*

The second dissolution of the National Assembly in June, 1917 was denounced as a violation of the Constitution, and was immediately followed by a separation movement of the southwestern provinces. Dr. Sun Yat-sen established a military government in Kwangtung. General Lu Yung-ting and General Tang Chi-yao, who headed the military government in Kwangsi and Yunnan respectively, pledged their support to the Kwangtung Government. A portion of the Chinese navy also declared its intention to coöperate. The dissolved Parliament continued its existence in Canton, proclaiming itself the only legal legislative body of the Republic.

#### *Party Situation in the North*

Despite the fact that President Feng Kuo-chang and Premier Tuan Chi-jui were members of the Northern Military Party, they represented two different factions, the Chihli and the Anhwei or Anfu. Feng belonged to the former which was in control of Chihli, Kiangsu, Hupeh and Kiangsi; Tuan led the latter which was in control of Anhwei, Honan, Hunan, Chekiang, Shansi, Shantung, and Fukien. As to their policy towards the South, Feng favored peace and conciliation, while Tuan advocated war. After much wrangling, the President was compelled to adopt the policy of force, but military campaigns inaugurated by the Northern Government proved quite unsuccessful.

*The Parliamentary Election of 1918*

Although the National Assembly had been wiped out of existence, it was the intention of Tuan Chi-jui to preserve the forms of constitutionalism. In the fall of 1917 he summoned a National Council, consisting of delegates from the provinces, to frame a new election law for the Parliament. The Law<sup>1</sup> was promulgated on February 17, 1918, and in accordance with it a new Parliament was to be brought into being just in time to elect a President in the autumn of 1918.

The Parliament was to consist of two Houses, a Senate and a House of Representatives, to be elected by a system of electoral colleges. The number of representatives was greatly reduced, so that the House of Representatives would have one delegate for each million of the population.

Elections for the new Parliament were held in the summer of 1918. As was expected, only those provinces which declared their allegiance to the central authority sent their delegates to the new Parliament.

*The Election of Hsu Shih-chang As the President  
of the Republic by the New Parliament  
on September 4, 1918*

The immediate task of the new legislature was the election of a new President. Feng Kuo-chang figured prominently in the election. He might have been elected had it not been due to the fact that he was a military man, leading the Chihli faction, hostile to the Anhwei faction headed by Tuan Chi-jui. In fear of a possible clash of arms between the two, the Parliament under the influence of the militarists who were holding a conference in Tientsin elected Hsu Shih-chang, a sworn brother of Yuan Shih-kai and "a man of experience and great capacity."

<sup>1</sup> *Far Eastern Review*, July, 1918, pp. 296-303.



*The Institution of the Administrative Directorate  
in the South on May 18, 1918*

The military governments in Kwangtung, Kwangsi and Yunnan, established in the summer of 1917, were of a provisional character and were without a central authority. In order to consolidate them, the defunct Parliament, sitting in an extraordinary session on May 18, 1918 created an Administrative Directorate of Seven as the executive of the revolutionary government: Wu Ting-fang, Minister for Foreign Affairs, Tsen Chun-hsuan, Minister of the Interior, Tang Chi-yao, Chief of the General Staff, Lu Yung-ting, Minister of War, Lin Pao-yi, Minister of the Navy, Sun Yat-sen and Tang Shao-yi.<sup>1</sup> Thus there were two governments in China instead of one, opposed to each other and keeping the country disunited.

*The Shanghai Peace Conference for the  
Unification of the Country*

About two months after the Presidential election in North China the European War was terminated by a general armistice. In order to present a united front in the Paris Peace Conference, President Hsu Shih-chang issued a mandate calling attention to the necessity of national unification and ordering the cessation of all military operations. A peace conference representing the North and the South was finally arranged at Shanghai, and was opened on February 20, 1919. The Northern Delegation was headed by Chu Chi-chien and the Southern Delegation by Tang Shao-yi. Among all the issues<sup>2</sup> that the conference was to settle the vital one was with reference to the validity of the Presidential mandate of June 13, 1917, dissolving the National Assembly.

<sup>1</sup> Bau: *Modern Democracy in China*, p. 66.

<sup>2</sup> *Ibid.*, pp. 67-69.

The South demanded its cancellation, which the North refused to consider. Owing mainly to this deadlock, the conference was suspended for some time. Though it resumed its sittings later, it failed to bring the two hostile groups together.

*The Disintegration of the Southern Government  
and the Rise of the Anfu Club*

While the North and the South failed to agree on the terms of peace, the South itself was experiencing disintegration. Lu Yung-ting, Minister of War, adopted a rigorous policy in his method of government setting at naught the wishes of Dr. Sun Yat-sen and other members of the Nationalist Party. Finding little hope of coöperation with the Kwangsi faction, Dr. Sun Yat-sen, Dr. Wu Ting-fang and Mr. Tang Shao-yi transferred their headquarters to Shanghai, leaving Lu Yung-ting dominant in the South.

Meanwhile the Northern government was dominated by a handful of politicians, pro-Japanese in their views and activities, who constituted the Anfu Club in support of Tuan Chi-jui.<sup>1</sup> Their rise to power threatened the interests of the Chihli Party, and mutual suspicion and jealousy led these two factions to open rupture.

*Civil War Between the Anfu Party and the Chihli  
Party<sup>2</sup> and the Dissolution of the Peking  
Parliament, Summer 1920<sup>3</sup>*

The war was simply a contest for power. But there was a direct cause. Hsu Shu-cheng of the Anfu Party, a lieutenant of Tuan Chi-jui, was dismissed by President Hsu Shih-chang under the pressure of

<sup>1</sup> For the history of the Anfu Party see Lynn, *Political Parties in China*, pp. 95-120.

<sup>2</sup> Bau: *Modern Democracy in China*, p. 72.

<sup>3</sup> *Ibid.*, p. 73.

General Wu Pei-fu of the Chihli Party. As a counter move, Tuan Chi-jui demanded the dismissal of Generals Wu and Tsao. The latter accepted the challenge and war broke out. Victory went with the Chihli Party. After dissolving the Parliament and putting all the Anfuites under arrest, the two being in close connection, the Chihli Party maintained its supremacy in the North for the ensuing four years.

*The Election of Dr. Sun Yat-sen As the President  
of the Republic by the Old Parliament  
in Canton, April 7, 1921*

In the South the situation was marked by an equally important change. General Chen Chung-ming, a scholar and an able soldier, initiated a movement to overthrow the Kwangsi faction. It was largely due to his military success that Dr Sun and other leaders of the Nationalist Party and the members of the dissolved Parliament reestablished their regime in Canton in the winter of 1920. On April 7, 1921 the Parliament, sitting in an extraordinary session, elected Dr. Sun as the President of the Republic. The vote given him was 218 out of the 222 present. But the constitutional requirement for election was the attendance of two thirds of total membership of both Houses (580 out of 870) and a majority of three fourths of those present (435).<sup>1</sup>

*Fengtien-Chihli War, April 1922<sup>2</sup>*

In the war against the Anfu Party in the summer of 1920 Generals Tsao and Wu were supported by General Chang Tso-lin who headed the Fengtien faction. Now Wu and Chang were at odds. Wu objected to the appointment of Liang Shih-yi as premier because

<sup>1</sup> Bau: Modern Democracy in China, p. 75.

<sup>2</sup> Ibid., pp. 76-78.

of his attempt to open up direct negotiations with Japan regarding the Shantung question, which was being considered in the Washington Conference. Supported by Chang Tso-lin, Liang refused to resign. In the meantime General Chang entered into an alliance with Dr. Sun Yat-sen so that they might undertake a joint campaign against Wu Pei-fu. In spite of attempts at mediation, hostilities began on April 27, 1922. Within a few days, however, the Fengtien troops were crushed and the supremacy of the Chihli Party was once more established in the North.

*Li Yuan-hung Succeeds Hsu Shih-chang  
As President, June 10, 1922*

General Wu Pei-fu, who distinguished himself in the Fengtien-Chihli War, was now the center of Chinese politics. He came forward with a program of political reconstruction, proposing *inter alia*, the revival of the Old Parliament, the cancellation of the Peking and Canton governments and the adoption of a permanent constitution.<sup>1</sup> As a first move towards the realization of General Wu's program, President Hsu Shih-chang tendered his resignation on June 2. Dr. Sun Yat-sen, however, refused to cancel his Canton government, contending that it was the only legal government in China.<sup>2</sup> On June 10, after being invited by the Peking cabinet and with the support of a considerable part of the Old Parliament and of Generals Chang Tso-lin of Fengtien and Chen Chung-ming of Kwangtung, Li Yuan-hung, who had resigned in June, 1917, once more assumed the Presidency.

*Civil War in the South, June 1922*

While civil war characterized the situation in the North, the prospect in the South was by no means

<sup>1</sup> Bau: Modern Democracy in China, p. 80.

<sup>2</sup> Ibid., p. 81.

bright. As a result of his secret understanding with General Wu Pei-fu of the Chihli Party, General Chen Chung-ming, who helped Dr. Sun in the elimination of the Kwangsi faction, betrayed his chief. Not only did he refuse to coöperate with Dr. Sun in the northward expedition, but he also demanded his resignation and attacked him (June). Hard pressed, Dr. Sun took refuge in one of his cruisers and finally fled to Shanghai. Several attempts to recapture Canton were made, but were of no avail.

*The Meeting of the Old Parliament,  
August 1, 1922*

On August 1, 1922 the Old Parliament reassembled at Peking (now Peiping).<sup>1</sup> A quorum was secured for both Houses. But ill-feeling and friction soon developed between the northern and southern members. Again the question of a permanent constitution was brought up for consideration and again no agreement could be reached. As of old, the policy of non-coöperation and obstruction was practiced. All of a sudden, however, the Parliament passed a constitution during the early part of October, 1923 which was promulgated on the 10th of the same month in commemoration of the Revolution.

*The Election of Tsao Kun As President,  
October 5, 1923*

Having defeated the Anfu Party in the summer of 1920 and the Fengtien Party two years after, General Tsao Kun of the Chihli Party became more ambitious than ever. He had already many dignities, but to him the presidential title was very desirable. As a first step, President Li was forced to retire so as to make way for a new president. Then Tsao imitated

<sup>1</sup> Bau: Modern Democracy in China, p. 83.

the tactics of Yuan Shih-kai by resorting to intimidation and bribery. On October 5, the Presidential election was held and the Old Parliament voted in his favor.<sup>1</sup>

### *The Constitution of 1923*<sup>2</sup>

Though the legality of the Constitution of 1923 was quite a question, the document is worth study in view of the fact that it was the work of the Old Parliament and was duly adopted by it. Briefly stated, it embraces the following features.

With reference to the relation between the executive and the legislature the form of government was cabinet rather than presidential. The appointment of the premier must be approved by the House of Representatives (art. 94). Members of the cabinet might attend the meetings of the legislature and speak (art. 96). The House possessed the right of passing votes of lack of confidence in the executive (art. 62), while the president, with the concurrence of the Senate, could dissolve the House (art. 89).

As to the distribution of powers between the central government and the provincial governments, an attempt was made to define the powers of both, with ~~this~~ elastic provision, however, that powers of a national character should belong to the nation and those of a local nature to the provinces (art. 26). Any dispute arising between two provinces was to be settled by the Senate (art. 31) or by the Supreme Court (art. 26). In case of conflict of jurisdiction between national and local laws, the matter should be decided by the Supreme Court (art. 28).

The Parliament was to consist of two Houses, the Senate and the House of Representatives. It was

<sup>1</sup> Vinacke: *A History of the Far East in Modern Times*, p. 246.

<sup>2</sup> *Current History*, January, 1924, pp. 660-665.

*China Year Book*, 1925, pp. 694-705.

also a constitutional convention, empowered to introduce amendments to the constitution and to interpret it (arts. 137, 139, 140). It might address interpellations to the members of the cabinet (art. 67). Its financial powers were extensive, but it might not propose increase to the budget (art. 116).

The President was to be elected by the Parliament sitting as an electoral college (art. 73). He was given extensive powers, but in the exercise of them he was under the check of the legislature.

The provinces were given local autonomy. Laws of provincial self-government were to be worked out by a provincial self-government convention to be composed of representatives from the provincial and district legislative assemblies and representatives chosen on a vocational basis in accordance with law.

*Second Fengtien-Chihli War, September 1924 and  
the Rise of Tuan Chi-juí As the  
Provisional Chief Executive*

In the first Fengtien-Chihli war, 1922, General Chang Tso-lin was defeated by Generals Wu Pei-fu and Tsao Kun. After two years of recuperation, Chang was ready for another war. Hostilities first broke out between Chi Hsih-yuan of the Chihli Party and Lu Yung-hsiang of the Anfu Party in the latter part of August, 1924, the former being in control of Kiangsu and the latter of Chekiang, and in alliance with General Chang.<sup>1</sup> Immediately after, war ensued in the North between the Fengtien Party and the Chihli Party. General Wu might have won another victory had it not been for the *coup d'état* of Feng Yu-hsiang, commonly known as the Christian General. The defeat of Wu brought Tuan Chi-juí into prominence in September with the title of Provisional Chief Executive.

<sup>1</sup> Vinacke: A History of the Far East in Modern Times, p. 247.

But he was no more than a titular head, acting as Chang and Feng dictated to him. In April, 1926, owing to the pressure brought to bear upon him by Generals Wu Pei-fu and Sun Chuan-fang and the difficult conditions under which he was working, he resigned.

In June of the same year Wu Pei-fu and Chang Tso-lin resumed friendly relations, having coöperated in a campaign against Feng Yu-hsiang, who headed the Northwestern Army.

*The Reconsolidation of Dr. Sun's Forces  
in Kwangtung, 1923*

Owing to the betrayal of Chen Chung-ming, as it will be recalled, Dr. Sun Yat-sen was compelled to leave the South in 1922. In 1923, however, the situation looked bright. He was able to go back to Kwangtung and reorganize the military government with himself as Generalissimo. Though Chen was still a factor in Southern politics, his strength had been weakened. On the other hand, Dr. Sun's forces were consolidated and his colleagues now pledged to fight for the revolutionary cause until the whole China should be united. By 1925, Chen Chung-ming was completely routed, and later he became an adviser to General Wu Pei-fu.

*First National Congress of the Nationalist  
Party, January 1924*

Realizing the importance of efficient organization and strict discipline, the Nationalist Party underwent a reorganization following the promulgation of its manifesto in January 1923. In January 1924 there was held in Canton the First National Congress<sup>1</sup> in

<sup>1</sup> For the manifesto of the First National Congress see, Dr. Sun Yat-sen, *His Life and Achievements*, by the Publicity Department of the Central Executive Committee, pp. 38-44.



which the regulations of the Party were determined upon, a Party platform was adopted, the methods of its enforcement were outlined, and several resolutions were adopted including one urging the organization of the Nationalist Government.

Not long after the adjournment of the National Congress, Dr. Sun completed his *Fundamentals of National Reconstruction* and delivered his lectures on the *Three Principles of the People*.

*The Organization of the Nationalist Government  
in Canton, July 1st, 1925*

In accordance with the resolution of the First National Congress of the Nationalist Party and Dr. Sun's program of national reconstruction, the Nationalist Government was organized on July 1st, 1925. It was headed by a commission of sixteen persons, with Wang Ching-wei as chairman. In spite of the death of Dr. Sun in March, 1925, the Nationalist Party, invigorated by its new communistic elements, proved to be an effective organization. It was with the hearty coöperation of the Party that the Nationalist Government first consolidated its military strength in the South and then inaugurated the northern expedition.

*The Northern Expedition<sup>1</sup> Under the Command  
of General Chiang Kai-shek,  
July 1926—June 1928*

The burden of leading the expedition was thrust upon General Chiang Kai-shek, who was destined to play a vital part in Chinese politics in the immediately succeeding years. As Commander-in-Chief of the People's Revolutionary Army, he took up his strenuous

<sup>1</sup> Tyau: *Two Years of Nationalist China*, pp. 4-12.

task on July 9, 1926. In spite of difficulties he worked wonders. On July 13 Changsha fell into the hands of the Nationalist troops. Hankow suffered the same fate on September 7. On November 8 Nanking was captured. By March 21, 1927 Shanghai was taken. Four days after the Revolutionary Army entered Nanking in triumph. In May Shantung and Chihli fell in turn. On June 8 Peking, the old capital, hoisted the Nationalist Flag. With Manchuria (the "Three Eastern Provinces") declaring its allegiance to the Nanking Government on December 31 China's unification was achieved.

*The "Purifying Movement" of the Nationalist Party*

It is necessary to remark here that in spite of the military success of the Nationalist Party in its northward expedition since the admission of the communistic elements into it, the Party was at the same time seriously discredited. The reason was twofold. In the first place, the communists, instead of putting into practice the Three Principles of Dr. Sun as they agreed to do at the time of their admission, took advantage of their Kuomintang (Nationalist Party) membership to propagate their communistic ideas. In the second place, instead of attempting to elevate or improve the economic condition of the masses, they resorted to the work of destruction—plundering, robbing, killing and burning. The Nanking incident of March 24, 1927, is too well known to be recounted here. Suffice it to say, it was a deliberate plan of the communists to discredit the Nationalist Government which was just beginning to build its international faith. Owing mainly to this disreputable incident, General Chiang Kai-shek, in collaboration with other members of the Nationalist Party, set up another government in Nanking on April 18, 1927<sup>1</sup> in opposition to the government at

<sup>1</sup> Tyau: op. cit., pp. 8-9.

Hankow which had been transferred from Canton on January 1st, 1927, and had fallen completely under the domination of radicals.

A "purifying movement" was launched soon after the establishment of the Nanking Government with the specific purpose of expelling and punishing the communists. Severance of diplomatic relations with Soviet Russia was effected in December 1927,<sup>1</sup> owing to the communistic *coup d'état* in Canton in November and December of the same year and the fact that Russian Consulates and commercial establishments had been utilized as headquarters for communistic propaganda and activities. This "purifying movement" is important since it shows to the world that the nationalist movement is by no means a communistic movement and that China is making an earnest effort to stem the tide of communism.

#### IV PERIOD OF POLITICAL RECONSTRUCTION, 1928-

##### *Dr. Sun Yat-sen's Program of Political Reconstruction*

The program of political reconstruction as outlined by Dr. Sun provides for three periods: 1st, the period of military operations, 2nd, the period of political tutelage, 3rd, the period of constitutional government.<sup>2</sup> With the fall of the old capital, Peking (now Peiping), in June 1928, China entered into the second stage, that of political tutelage, which is fixed for six years, 1930-1935 inclusive.<sup>3</sup> This educative stage is both significant and necessary in China's constitutional development. It is significant in that it marks the end of military despotism; it is necessary as a means of bridging the gap between autocracy and

<sup>1</sup> *Far Eastern Review*, July, 1928, Article on "The Russians Leave China."

<sup>2</sup> *Fundamentals of National Reconstruction*, art. 5.

<sup>3</sup> Tyau: op. cit., p. 34 footnote.

republicanism and leading the people from constitutional ignorance to experience. Thus says Dr. Sun in his *Fundamentals of National Reconstruction*:

"During the period of military operations the entire country should be subject to military rule. To hasten the unification of the country, the Government should employ military force to conquer all opposition in the country and propagate the principles of the Party so that the people may be enlightened.

"The period of political tutelage in a province should begin and military rule should cease as soon as order within the province is completely restored.

"During the period of political tutelage the government should despatch trained officers who have passed the examinations to the different districts to assist the people in making preparations for local self-government. . . ."<sup>1</sup>

The preamble to the Organic Law which was promulgated on October 4, 1928 embodies the same idea:

"The Kuomintang of China, in order to establish the Republic of China on the basis of the Three Principles of the People and the Constitution of the Five Powers, which form the underlying principle of the Revolution, having conquered all opposition by military force and having now brought the Revolution from the military stage to the educative stage, deem it necessary to construct a framework for the Constitution of Five Powers with a view to developing the ability of the people to exercise political power, so that constitutional government may soon come into existence and political power be restored to the people; and, further, in virtue of the responsibilities hitherto entrusted to the Party for the guidance and supervision of the Government, do hereby ordain and promulgate the following Organic Law of the National Government."<sup>2</sup>

It is to be noted, therefore, that during the six years (1930-1935 inclusive) following the promulgation of the Organic Law, the Party will exercise the rights of the people who are the legal sovereign, entrusted with the responsibility of equipping them with such political experiences as will be necessary for the successful

<sup>1</sup> *Fundamentals of National Reconstruction*, arts. 6, 7, 8.

<sup>2</sup> *China Weekly Review*, Vol. XLVI, No. 7, October 13, 1928, p. 224.  
*Far Eastern Review*, October, 1928, p. 443.

operation of a democracy. The exercise of political power by the Party during the period of tutelage does not mean, however, that it is also to govern the nation. According to Dr. Sun, "political power" (sovereign power) belongs to the people, but "governing power" (administrative power) belongs to the government represented by the five yuan<sup>1</sup> (council or department)—the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Examination Yuan and the Control Yuan.

### *Further Military Activities*

Though the National Government<sup>2</sup> has been devoting itself to constructive work since the conclusion of the northern expedition in 1928, it has not been altogether free from military activities.<sup>3</sup> In February, 1929 Li Tsung-jen raised the standard of revolt. Not long after Feng Yu-hsiang joined hands with him. Then T'ang Sheng-chih and Shih Yu-san followed suit. Finally Yen Hsi-shan, once an ardent supporter of the Nanking Government, rebelled and set up a rival government in Peiping in the summer of 1930. Against all these rebels the National Government resorted to military force. By November, Yen's government was overthrown and his influence completely annihilated. The unity of China was again achieved, achieved at an immense sacrifice of men and treasure.

### *The National People's Convention and the Provisional Constitution*

In accordance with the decision of the Fourth Plenary Session of the Central Executive and Supervisory

<sup>1</sup> Sixth lecture, Dr. Sun's, Principle of Popular Sovereignty.

<sup>2</sup> Since the promulgation of the Organic Law on October 4, 1928, the term National Government is used in place of the Nationalist Government.

<sup>3</sup> T'au: op. cit., pp. 13-15.

## CHINESE GOVERNMENT AND POLITICS

committees of the Third National Congress of the Kuomintang held in November, 1930, the National People's Convention was convened in May, 1931. Attended by five hundred delegates who represented the provinces, municipalities, Mongolia and Tibet and the Nationalist Party, and lasting for about two weeks, it adopted a Provisional Constitution for the period of military tutelage. Owing to their significance, the Convention and the Constitution are separately treated in the next chapter.

### *The Japanese Invasion of Manchuria, September 18, 1931 and National Unification*

Unfortunately peace did not last long in China. In May, 1931, the Kwangtung faction of the Nationalist Party attempted to overthrow Chiang Kai-shek. In July, Shih Yu-san took up arms against the Nanjing regime, but this rebellion collapsed within a month. Taking advantage of China's internal warfare, Japan invaded Manchuria on September 18, 1931. It was because of this appalling situation that the Japanese, which at the time was planning another attack on Nanking, laid down its arms and came to talk of peace and reunion in November. In the following month President Chiang Kai-shek resigned after three years of service.

Civil war and reconstruction are irreconcilable. A nation on earth can prosper if her men and resources are not wasted for purposes of war. China is now experiencing a crisis unparalleled in her history. National unification calls for constructive thinking as well as constructive deeds. The citizens of this Republic must see to it that bloodshed be avoided and that a—enduring peace, be maintained. In laying the foundation of this Democracy, the first and the most vital thing to do is to replace bullets by ballots.

SUMMARY OF CHINA'S CONSTITUTIONAL  
DEVELOPMENT UNDER THE REPUBLIC

The history of China's constitutional development may be divided into four periods. The first period, that of Yuan Shih-kai, 1912-1916, was characterized by his conflict with the National Assembly, his dictatorial regime and his monarchical *coup*. The second, that of constitutional restoration, 1916-1917, was marked by the restoration of the Provisional Constitution and the reconconvocation of the National Assembly, but was ended by its dissolution. The third, that of civil war, 1917-1928, was a period of internal dissension and open warfare. Though most of the wars were fought for selfish purposes and were local and personal in character, some were fought because of constitutional differences, such as centralization *vs.* decentralization or provincial autonomy, cabinet *vs.* presidential form of government, the validity of the June mandate dissolving the National Assembly, etc. The last, that of political reconstruction, 1928- is a period of preparation for constitutional government, during which an effort will be made to train the people for local self-government and to qualify them to exercise the four fundamental rights of democracy, namely, election, initiative, referendum, and recall.

## CHAPTER IV

### THE NATIONAL PEOPLE'S CONVENTION AND THE PROVISIONAL CONSTITUTION

#### THE NATIONAL PEOPLE'S CONVENTION AND THE NATIONAL CONGRESS

THE National People's Convention (Kuo Min Hui I) contemplated by Dr. Sun Yat-sen while he was in the north in December, 1924 after the second Fengtien-Chihli war, and reiterated in his will three months after, was not convened until May, 1931. In both its nature and purposes it is different from the National Congress (Kuo Min Ta Hui).<sup>1</sup> In the first place, the Convention is intended to deliberate on questions of national reconstruction and particularly to adopt a provisional constitution for the period of political tutelage (1930-1935),<sup>2</sup> while the Congress, which is to be held in 1935, is to adopt a permanent constitution and is to inaugurate the four rights of democracy—election, initiative, referendum and recall. In the second place, the Convention and the Congress are different in their period of existence. In the case of the former, it is stipulated in its Organization Law that the session of the Convention shall be from ten to fifteen days, to be prolonged only when necessary.<sup>3</sup> In other words, the Convention has only a temporary

<sup>1</sup> For the National Congress see the topic, "The 'Five-Power' Theory" of Dr. Sun Yat-sen in the next chapter and arts. 14 and 23 in the *Fundamentals of National Reconstruction*.

<sup>2</sup> Manifesto of the Military Government of the T'ungmenghui or Alliance Society, 1905 (in Chinese).

<sup>3</sup> Art. 8.



existence; it is created to consider questions of national reconstruction requiring immediate solution, and is not to be reconvened within the period of tutelage. The Congress, on the other hand, is a permanent organ, to meet every two years or oftener as the case may be. While it is not in session, its work is to be done by a smaller body, a central executive committee in all probability. (Such is the case with the National Congress of the Nationalist Party.) In the third place, the Convention is organized on the basis of occupations. Five groups are represented—those who are engaged in the professions (education, law, medicine, and engineering), farmers, laborers, the trading interests, and the Nationalist Party. In the case of the National Congress, the principle of organization is territorial, that is to say, the Congress is to be composed of delegates from the districts—one from each.<sup>1</sup>

Being the first of its kind in the history of the Republic and representing not only the provinces but also the outlying territories, the National People's Convention constitutes a landmark of China's constitutional development and is an instance of national unity.

### THE ORGANIZATION OF THE NATIONAL PEOPLE'S CONVENTION

For the organization of the People's Convention a law was promulgated on April 24, 1931.<sup>2</sup> According to it, the Convention is to be composed of vocational groups from the provinces and municipalities, members of the Nationalist Party, and delegates representing Mongolia and Tibet and overseas Chinese (art. 1). Members of the Central Executive Committee and the Supervisory Committee of the Nationalist Party and State Councillors may occupy seats in the Convention

<sup>1</sup> *Fundamentals of National Reconstruction*, art. 14.

<sup>2</sup> *Chinese Affairs* issued by the International Relations Committee, No. 126-127, April 30, 1931, pp. 148-151.

as *ex officio* members (art. 2), but the following classes may only attend its meetings: (1) alternates of the Central Executive Committee and the Supervisory Committee of the Nationalist Party; (2) heads of ministries and commissions of the various yuan; (3) those specially permitted by the presidium of the Convention. The presidium or presiding board consists of nine members (art. 4), who sit as chairmen in rotation.

The session is fixed at from ten to fifteen days. In case of necessity, it may be prolonged (art. 8).

A majority constitutes a quorum. All decisions are to be made by a majority of those present. A two thirds majority may, however, be required, if one third of the members or the presidium should so desire (art. 11). In case of a tie, the chairman has the deciding vote.

In voting three methods may be practiced: by a show of hands, by calling for the Ayes and Noes to rise in succession, or by taking a ballot (art. 12).

To facilitate the work of the Convention, three committees are created: a committee on the examination of the qualifications of the delegates, a committee on the examination of proposals, and a committee of special examination (art. 13). The function of the second committee is to determine what proposed measures should be brought up for discussion. This has the merit of eliminating unimportant bills and of combining bills similar in character though it may seem that too much power is given to the committee. The last mentioned committee is divided into seven sub-committees—military, diplomatic, financial, legislative, economic, educational, and internal, and is to consider those measures referred to it by the Plenary Session of the Convention or by the presidium.

In addition, the Convention has two offices—the secretariat and the serjeants at arms. The former is charged with the usual clerical duties and the latter have to do with the maintenance of order.

The meetings of the Convention must be conducted publicly, but on the request of one third of its members or on the initiative of the presidium, they may be held in camera (art. 10).

For the maintenance of order while the Convention is in session certain disciplinary rules are adopted. The enforcement of discipline involves warring, apology before the Convention, temporary exclusion, and exclusion (art. 24).

### RULES OF PROCEDURE<sup>1</sup> .

The main purpose of the rules of procedure is to expedite business. In view of the shortness of the session, such rules are highly desirable. All measures, before being placed on the calendar, must first be reported to the presidium and then studied by the committee on the examination of proposals. On request, a proposal may, however, be withdrawn provided it has not been brought up before the Convention for consideration. All bills must be presented in written form with their reasons and clauses clearly stated. As a rule, three readings are required, but the presidium may simplify the procedure.

Non-members admitted to the sittings of the Convention may express their views, but they may not vote. Neither can one vote for or against a bill with which he is connected.

Before its official opening the Convention may sit in preliminary session, the chairman of which is to be elected. Of the nine members constituting the presidium seven are to be elected by the Convention, one by the National Government and one by the Central Party authorities. All provinces which send more than twenty five delegates may nominate a candidate to the presidium. Those which send a less number of delegates may join with other provinces to nominate

<sup>1</sup> For the rules of procedure see Hsin Wan Pao, a leading Chinese newspaper, May 5, 1931, p. 1.

a candidate provided the combined number of delegates exceeds twenty five. Delegates representing municipalities, Mongolia and Tibet, overseas Chinese, and the Nationalist Party organization in the army may nominate one candidate respectively.

The seats are chosen by lot at the preliminary session. The opening of the daily sitting may be delayed for such a period as the presidium may see fit in case of failure to obtain a quorum at the scheduled time. If there is no quorum at the expiration of the period set, the meeting must be declared adjourned.

. At the discretion of the presidium urgent measures may be given the right of way at any time. This may involve an alteration of the order of the day if some bills are already in the course of discussion. All proposals must be related to national reconstruction and national unity and must not be in conflict with the *Plans for National Reconstruction*, *Fundamentals of National Reconstruction*, *The Three Principles of the People* and the *Manifesto of the First National Congress of the Nationalist Party*. Moreover, before being reported to the presidium, they must be signed by two tenths of the delegates. Motions from the floor are however, not subject to this requirement. Explanations of bills as well as questions and replies relating to them may not exceed fifteen minutes. Discussions are limited to five minutes only. No delegate is permitted to speak twice on the same bill. In order to close a debate the previous question may be moved provided it is seconded by forty members.

### ELECTION LAWS

The matter of electing delegates to the Convention is regulated by two Laws—the Election Law and the Election Enforcement Law. According to the Election Law adopted by the Central Executive Committee

of the Nationalist Party on December 30, 1930 the total number of delegates shall be 520, to be apportioned as follows: 450 for the 28 provinces, 22 for the 8 municipalities, 12 for Mongolia, 10 for Tibet and 26 for Chinese nationals resident abroad (art. 1). Of the 450 delegates from the provinces 30 are allotted to Kiangsu, 24 to Chekiang, 20 to Anhwei, 28 to Kiangsi, 30 to Hopei, 30 to Shantung, 12 to Shansi, 30 to Honan, 14 to Fukien, 29 to Hupei, 30 to Hunan, 30 to Kwangtung, 11 to Kwangsi, 17 to Shensi, 7 to Kansu, 5 to Sinkiang, 30 to Szechuan, 12 to Yunnan, 11 to Kweichow, 15 to Liaoning, and 5 each to Kirin, Heilungkiang, Chahar, Suiyuan, Jehol, Ch'inghai, and Ninghsia (art. 2). Concerning the municipalities, Nanking has three delegates, Shanghai five, Peiping three, Hankow three, Tsingtao one, Harbin one, Tientsin three, and Canton three (art. 3). The 26 delegates for Chinese nationals resident in foreign countries are distributed as follows: one each for the Philippine Islands, Honolulu, Peru, Mexico, Chile, Cuba, India, Burma, Annam, Europe, Central America, Japan, Korea, Australia, Tachides, and Africa, and two each for U. S. A., Canada, Malaya, Holland and Siam (art. 4).

The delegates shall be chosen by the following groups:

1. Farmer's Associations,
2. Labor Unions,
3. Chambers of Commerce and other Industrial Organizations,
4. Educational Associations, National Universities, Universities registered at the Ministry of Education and Associations of Liberal Professions,
5. The Nationalist Party (art. 5).

The privilege to vote is limited to those who have been engaged in farming for more than ten years, or in industrial or commercial work for more than five years, or in educational enterprises for more than five years, or in liberal professions for more than five

years. Only those who are actually engaged in such work at the time of election may vote. The election of delegates in the Party is separately regulated.

If one happens to belong to two groups, he must choose to join one (art. 15).

The following classes are debarred from being elected as delegates to the Convention: those who have been proved anti-revolutionists, corrupt officials and notorious bad characters, those who have been excluded from the Party or are deprived of their Party privileges (art. 5).

There shall be a general superintendent of elections and superintendents in various provinces, municipalities, Mongolia and Tibet, etc. (art. 9). Their duty is to supervise the elections and investigate the qualifications of the delegates (art. 12).

Contested elections, illegal elections, or frauds and crimes committed during the elections are to be settled either by the election superintendents or by the High Provincial Courts (arts. 17 and 18).

For the regulation of other details in connection with the election another law—the Election Enforcement Law was adopted by the Central Executive Committee of the Nationalist Party on January 15, 1931. It stipulates that the Convention shall be held in the national capital (art. 1), and that of the 30 delegates from Szechuan two shall be natives of Hsi'kang who are to be elected at large by the various groups in Hsi'kang (art. 3). In case a locality has less than five delegates, the general ticket system may be used, that is, the electors vote together without maintaining their group distinction (art. 4). The associations of liberal professions referred to in the Election Law include those of lawyers, physicians, and accountants (art. 6), and must have been registered at the different governmental offices concerned. All groups must compile lists of registration which contain the names of those entitled to vote (art. 7). Such

registration lists, after being examined by the superintendent of elections, are to be publicly posted (art. 12), and requests for changes must be made within the following five days (art. 13). Ballots are to be signed (art. 15).<sup>1</sup> No proxy voting is allowed (art. 15), but Chinese nationals resident abroad may send their ballots to the election officer by mail (art. 17). The date of election in each place is to be announced by the superintendent of elections (art. 21). Those who secure the highest number of votes will be declared elected (art. 39). If two persons get the same number of votes, the choice will be made by lot (art. 39). The election of delegates in the Party is to be regulated by the Central Party authorities (art. 51). The power of interpreting the Election Law and the Election Enforcement Law is vested in the National Government (art. 53).

### FEATURES OF THE ELECTION LAWS

It was in accordance with these Election Laws that the election of the National People's Convention was conducted in April, 1931. In two important respects they differ from the laws in other countries. In the first place, in the matter of determining the composition and qualifications of the electorate, they center on the principle of occupational or professional representation rather than on such factors as citizenship, age, sex, residence, the payment of taxes, the possession of education, etc. In the second place, they adopt the open ballot system. So far as the system of representation of interests is concerned, it has both merits and demerits.<sup>1</sup> On the one hand, it has been maintained that it is more in harmony with the spirit of democracy than the system of representation of political majorities or that of political minorities which

<sup>1</sup> Garner: Political Science and Government, pp. 663-664.

rests on purely geographical and political principles. On the other, it has been criticized as inconsistent with the principle of national sovereignty which is based on the theory that members of representative assemblies should represent the interests of the nation as a whole and not the special interests of particular classes. It has been further criticized as tending to accentuate the feeling of antagonism between different interests and forces, since the efficiency of a representative body is diminished in proportion to the number and variety of interests represented. Since only recently has the system been put into operation and only in a few countries (the All Russian Congress, the Italian Senate, and the German Economic Council and similar institutions in Yugoslavia, Poland, Italy, Spain, and Portugal are constructed on that basis), it is too early to draw a conclusion as to its success or failure.

As to the system of open ballot, the comment of modern writers in general is unfavorable for the reason that it is subject to intimidation, bribery and other corrupt and illegal practices, though it has the merit of preventing counterfeiting. It is to be noted, however, that in Russia and Hungary public voting is still in practice.

## PROCEEDINGS OF THE NATIONAL PEOPLE'S CONVENTION

### *(a) President Chiang's Inaugural Address<sup>1</sup>*

It was in the morning of May 5th, 1931, in the auditorium of the Central University, Nanking, that the National People's Convention was formally opened. As is the case with almost all important gatherings, the opening session of the Convention was characterized

<sup>1</sup> *China Weekly Review*, May 9, 1931, Vol. LIX, No. 10, p. 336, etc.



by an inaugural address, which was delivered by General Chiang Kai-shek, President of the National Government. In an atmosphere of unusual serenity, President Chiang started by reviewing the history of the Revolution. Then he pointed out that the Convention might have been held earlier but for the successive outbreaks of rebellion. He further remarked that the main purpose of the Convention was to consolidate peace and national unification, as well as to work out plans for national reconstruction, so as to pave the way for a constitutional government. Finally, he concluded by urging the entire nation represented by the delegates to strive for permanent peace and unification.

### (b) *The Two Preliminary Conferences*<sup>1</sup>

Before the first general session which took place on May 8th, two preliminary conferences were held, in which the proposal for the termination of China's unilateral treaties was presented, the seven members of the presidium were elected (two others, General Chang Hsueh-liang and Yu Yu-jen of the Control Yuan, were chosen by the National Government and the Central Party authorities respectively), the seats of the delegates were allotted, the agenda for the first general session was determined and various committees were appointed by the presidium. The agenda for the first general session included the following proposals:

1. "That a fitting tribute be paid to the Revolutionary martyrs as well as the soldiers and officers of the National Army who made the supreme sacrifice during the various punitive expeditions."

<sup>1</sup> *China Weekly Review*, May 16, 1931, Vol. LIX, No. 11, pp. 378, 379, 380.

2. "That the overseas Chinese Revolutionary Comrades be commended for the valuable contributions they have made towards the cause of the National Revolution."
3. "That the military units now engaged in the bandit suppression campaign be appropriately encouraged and commended."
4. "That the draft *Yu Fa* (Provisional Constitution) submitted by the National Government, be adopted."
5. "That the new national educational policy, submitted by the National Government, be adopted."
6. "That the national industrial reconstruction program, submitted by the National Government, be adopted."
7. Other emergency resolutions.

The committees appointed by the presidium were as follows:

Committee on the Examination of Proposals, with Mr. Wu Chih-hui as convener

Military Affairs Committee, with General Chu Pei-teh as convener

Foreign Affairs Committee, with Mr. Wang Shih-chih as convener

Finance Committee, with Mr. Lien Sheng-hai as convener

Legislative Committee, with Mr. Ting Wei-fen as convener

Economic Committee, with Mr. Chin En-chi as convener

Educational Committee, with Mr. Tsai Yuan-pei as convener

Internal Affairs Committee, with Mr. Nui Yung-chien as convener

(c) *Some Important Resolutions*<sup>1</sup>

Between the first general session on May 8th and the close of the Convention on May 17th, eight general sessions were held. The delegates attending the Convention numbered about 460. No less than 454 proposals were presented but only 46 of them were brought up before the Convention for discussion.

The most important of all the resolutions adopted was the one concerning the *Yu Fa*, the Provisional Constitution, which is to serve as the supreme law of the land and which the Government, the Party, and the people alike are to observe during the period of political tutelage.

Of no less significance was the resolution to accept and embrace the whole of the bequeathed teachings of the late Party Leader, Dr. Sun Yat-sen, on the basis of which the nation may gradually work out its salvation.

The adoption of the manifesto for the abrogation of China's unilateral treaties was equally important. In an emphatic tone the manifesto says:

"Having been entrusted by the entire nation, the National People's Convention can not remain indifferent to such a menace to China's national independence and security. In the opinion of the National People's Convention, the abrogation of the unequal treaties cannot be delayed any further if the nation is to be liberated from its shackles. Furthermore, instead of living on hopes,—an attitude which is already superfluous—a decisive step should now be taken to declare the abolition of those unequal treaties. For in accordance with the accepted usage of International Law, on the occurrence of any vital change of circumstances, the contracting party is entitled to avail itself of such change of circumstances to denounce its treaty and replace it with one in harmony with the principle of equality as well as in keeping with the actual conditions in order that the welfare of such contracting party may not be prejudiced and international good faith and peace may not be endangered. The Treaties between China and the various Powers having been concluded several decades ago, no one will deny that

<sup>1</sup> *China Weekly Review*, May 16, 1931, Vol. LIX, No. 11, p. 403.

*Ibid.*, May 23, 1931, Vol. LIX, No. 12, pp. 416-420, 440, 421.

there has been vital and manifest change of circumstances since those Treaties were concluded. How can the Chinese people recognize the existence of such unsuitable and obsolete Treaties, endangering China's very national existence?

"China is a member of the League of Nations. Article 19 of the League of Nations Convention (Covenant) provides as follows:

'The Assembly may from time to time advise the reconstruction by members of the League of treaties which have become inapplicable and the consideration of international conditions whose continuance might endanger the peace of the world.'

"In pursuance of the forgoing provision, the Chinese delegate, Dr. C. C. Wu, drew the attention of the League of Nations Assembly to its import but China's request did not meet with the respect it deserves.

"In view of the forgoing circumstances, the National People's Convention, being representative of the entire Chinese people, hereby solemnly declare the following to the entire world:

- '1. The Chinese people will not recognize any of the past unequal treaties imposed by the Powers upon China.
- '2. The National Government shall, in conformity with the late Dr. Sun Yat-sen's testamentary injunction, achieve with the least possible delay China's equality and independence in the family of nations."

Another important resolution was with reference to the industrial reconstruction program submitted by the National Government, which includes the nationalization of industries (through the creation of the National Economic Council), the building of railways and highways, the reclamation of undeveloped lands, the improvement of agriculture, the construction of ships and aeroplanes, the encouragement of investment of capital by overseas Chinese in the development of industries, etc.

Two others, dealing with the national education policy and the establishment of a compilation and translation bureau, which aim at the gradual elimination of illiteracy and the promotion of cultural enterprises respectively, were also adopted.

In view of the complexity of the Mongolian question the resolution which accords self-government to Outer

Mongolia, should be viewed with particular attention. For many years since the Republic the Mongolians have been struggling for independence. The adoption of this measure could therefore, meet at least partially the aspirations of the Mongolians, and the relation between China and Outer Mongolia would be similar to that between England and her self-governing dominions.

The Convention was concluded by a manifesto a part of which is quoted here:

"The history of Chinese civilization is more than four thousand years old. It reached its zenith in the Han and T'ang dynasties, and it suffered gradual decline during the Sung, Yuan and Ming dynasties. The collapse of the Chinese civilization, already growing senile, was hastened by centuries of misrule. Its final debacle came at the end of the Ts'ing dynasty, when it was compelled to face the impact of Western civilization, a civilization at once verile and aggressive, armed with science and backed up by tremendous industrial resources. China was almost reduced to a semi-colonial state, yet the Chinese people did not realize the critical situation.

"Dr. Sun Yat-sen, realizing the imminent peril of the Chinese race, led the National People's Revolution and fought for forty years against reactionary forces with one thought, namely, the reconstruction of China on the basis of the Three People's Principles. His task was uncompleted even with the overthrow of the Manchu Government as the Militarists in league with the Imperialists furnished further obstacles to the successful conclusion of the National Revolution. . . .

"The sufferings of mankind are caused chiefly by (a) wars for racial ascendancy, (b) wars for political authority and (c) wars for economic power. The Three People's Principles are designed to obviate such conflicts, as the principle of Nationalism advocates equal opportunity in racial development; the principle of Democracy gives the political right to the people and the governing power to the Government, thereby removing the basic cause of tyrannical rule; and the principle of People's Livelihood advocates the equitable distribution of wealth, minimizing thereby economic inequality. . . .

"As pointed out by Dr. Sun, the Chinese people, having submitted to centuries of autocratic rule, have lost their capacity for self-government. They must first, therefore, go through a period of political tutelage. It is with this in mind that this Convention devoted particular attention to the framing of the *Yu Fa* (Provisional Constitution).

"The Unequal Treaties have even been shackles cramping our sovereign rights and crippling the normal development of our economic life. . . . The Chinese people, guided by Dr. Sun, during the past few decades, feeling the irksomeness of these Unequal Treaties, have dedicated themselves with added determination to the task of their abolition. . . .

"The obstacles to the National People's Revolution were hitherto Imperialism and its ally, Militarism. A new foreign menace has arisen in their wake, namely Communism. . . . This Convention hereby enjoins the people to stand together as one man and support the Government in carrying out its anti-Communist campaign.

"The solution of the problem of the People's Livelihood can only be obtained by way of industrial reconstruction. . . . This Convention has incorporated into the *Yu Fa* the principles underlying national industrial reconstruction as outlined by Dr. Sun, and we sincerely enjoin the Government to concentrate its energy and resources on the work of reconstruction, such as the development of rural economy, the development of mines, river and harbor conservancy, the reclamation of waste land, road-building, navigation, aviation, and the development of all descriptions of industrial enterprises."

## THE PROVISIONAL CONSTITUTION <sup>1</sup>

### (a) *Contents*

Adopted by an organ representing the entire nation and being the supreme law of the land for the period of political tutelage, the Provisional Constitution not only signifies the idea of a government of law but also represents China's progress in the realm of constitutionalism. As an instrument of the "five-power" government, it consists of a preamble, eight chapters and eighty-six articles. That the adoption of a provisional constitution is to accelerate the realization of constitutional government is the main idea of the preamble.

The first chapter is one of general principles. It defines the territory of China, the location of sovereignty, the citizens, the National Flag, and the National Capital.

<sup>1</sup> For the text of the *Yu Fa* (Provisional Constitution) see *China Weekly Review*, May 23, 1931, Vol. LIX, No. 12, pp. 422, 423, 439.

The second chapter deals with the rights and duties of the people. Among the rights of the citizens are those relating to equality before the law, suffrage, initiative, referendum and recall (to be exercised in accordance with article 8 of the *Fundamentals of National Reconstruction* of Dr. Sun Yat-sen), liberty of conscience, freedom of assembly and formation of associations, liberty of speech and publication, property protection, the holding of public posts, petitioning, etc. The payment of taxes, the undertaking of military service, and the performing of compulsory labor (for the State) are some of the corresponding duties.

The third chapter centers on the political policies and programs of the period of political tutelage. It lays special emphasis on district autonomy, and makes clear that during the period of political tutelage the National Congress of the Kuomintang (Nationalist Party) shall exercise the governing powers on behalf of the National Congress of the People (Kuo Min Ta Hui) and that during the recess of the National Congress of the Party the Central Executive Committee shall exercise the said powers. The National Government, entrusted with the five governing powers—executive, legislative, judicial, examination and supervisory, shall train and guide the citizens in the exercise of the four political rights of election, initiative, referendum and recall.

The fourth chapter is on the people's livelihood. It provides that the State shall afford every encouragement and protection to the productive enterprises of the people, and that it shall take steps to carry out the following measures:

1. Reclamation of all waste lands and development of farm irrigation;
2. Establishment of agricultural banks and encouragement of coöperative enterprises in the rural communities;

- 3 Enforcement of a Public Granary System for the prevention of famines and other calamities and replenishment of the people's food supplies;
4. Development of agricultural education with special emphasis on scientific experiments, extensive development of agricultural enterprises, and increase of agricultural produce;
5. Encouragement of road-building in the rural districts to facilitate the transportation of agricultural products.

In addition, the State shall open mines of various kinds and shall undertake and inaugurate State shipping enterprises. It further stipulates that the State shall encourage and promote various coöperative enterprises, shall put into effect various laws for the protection of labor and shall afford special protection to child and woman workers in respect of their age and health.

The fifth chapter is on the education of the citizens, the basis of which shall be the Three Principles of the People. Equal opportunity in education shall be provided for both sexes and free education for the young and for adults who have not had education. All public and private educational institutions are subject to the supervision of the State. Encouragement and grants shall be given to private educational institutions, and for the education of overseas Chinese. Research and discoveries in science and in the arts shall be encouraged. The Central and Local Governments shall provide adequate funds for necessary educational expenses, and shall also safeguard the security of funds which are appropriated by law for educational purposes.

The sixth chapter regulates the distribution of powers between the Central and Local Governments, which shall be made in accordance with article 17 of the *Fundamentals of National Reconstruction* which reads:



"During the period of constitutional government, the powers of the Central Government and those of the provinces shall be evenly distributed. Affairs of a national character shall be reserved for the Central Government and those of a local character shall be reserved for the districts. The system is neither a centralization nor a decentralization."

In case local laws and regulations are in conflict with those promulgated by the Central Government, they shall be null and void. The demarcation of central and local revenues shall be determined by law. The Central Government may, however, restrict by law, any local tax when

1. It is contrary to public interest,
2. It encroaches upon the source of central revenues,
3. It constitutes overlapping taxation,
4. It is detrimental to communications,
5. It is unjustifiably imposed upon goods imported from other localities for the sole benefit of the locality concerned,
6. It is in the nature of a transit duty on commodities in circulation among various localities.

The power of granting patents and monopolies is vested in the Central Government.

The seventh chapter is on the organization of the Governments—both central and local. The National Government shall be composed of five yuan—the Executive, the Legislative, the Judicial, the Control and the Examination, the various Ministries and Commissions. In addition, there shall be a President and an appropriate number of State Councillors, to be selected and appointed by the Central Executive Committee of the Nationalist Party. The National Government which is to exercise all the governing powers of the Republic, shall have supreme command over the land, naval and air forces. In addition,

it has the power to declare war, negotiate peace and conclude treaties, grant pardons, restore civil rights, confer medals and decorations of honor and compile and publish a budget and financial statement of the national revenues and expenditures for each fiscal year. The Presidents of the five Yuan and the heads of the various Ministries and Commissions shall be appointed or dismissed in accordance with law by the National Government at the instance of the President of the National Government. The organization of the various Yuan, Ministries, and Commissions shall be separately determined by law.

The Government in the provinces, to be organized in accordance with laws, shall attend to the administration of provincial affairs under the supervision of the National Government.

The District Government is under the supervision of the Provincial Government. Its organization is to be separately determined by law. A District Self-Government Preparatory Committee shall be organized in each district to carry out the program outlined in article 8 of the *Fundamentals of National Reconstruction*.

Municipalities may be established in localities where industry and commerce, population and other special conditions warrant. Their organization shall be separately determined by law.

The eighth chapter is an annex. It stipulates that all laws which are in conflict with the Provisional Constitution shall be null and void and that when local self-governments are instituted in more than half of the provinces, the National Government shall summon a National Congress to decide upon the adoption and promulgation of a permanent constitution. ☉

The Provisional Constitution shall be promulgated by the National Government and shall come into force on the day of promulgation.

*(b) Features*

Compared with the new constitutions of Europe, the Provisional Constitution is characterized by nine features. The first is its brevity. It is a short document consisting of 86<sup>1</sup> articles. As China is undergoing a change in her social, economic and political development, a short constitution which possesses the elements of elasticity and adaptability, is much to be preferred.

Secondly, the Provisional Constitution has a time limit. It is to be effective only for the period of tutelage (1930-1935). If the program of district self-government should be completed in more than half of the provinces by 1935, a permanent constitution is to be promulgated. The period of tutelage is an educative period, during which the citizens will be trained in the ways of operating a constitutional government. In view of the lack of political experience on the part of the masses, such a provision is not only desirable but also necessary.

Thirdly, it is detailed in the work of the government but brief in governmental structure. It makes an attempt to enumerate the necessary and important things which the Government must undertake to do. True it also makes provision for a "five-power" government, but the organization of the five yuan (council) is left to be determined by law. This has the merit of flexibility, since the "five-power" scheme is in an experimental stage. On the other hand, the omission of such fundamental provisions as those regulating the relation between the Executive and Legislative Yuan, may give rise to serious complications owing to the fact that no other two departments are as intimately related to each other as the executive and the legislature.

Fourthly, the Provisional Constitution has its basis in the teachings of Dr. Sun Yat-sen.

It is for this reason that, fifthly, detailed provisions which characterize the new German Constitution, are made with reference to people's livelihood and education.

For the same reason, sixthly, it is stipulated that the Government shall devote its full energy to reconstructive work.

Seventhly, like other written constitutions, it has a bill of rights, the enjoyment of which is regulated by law.

Eighthly, the power of interpreting the Constitution is vested in the Central Executive Committee of the Nationalist Party.

Finally, it is characterized by a conspicuous omission, namely, the procedure of formal amendment. To say that the Provisional Constitution is not subject to change seems to be unreasonable, but that the Central Executive Committee of the Party is vested with the power of amending it would be a rational interpretation. The reasons are simple. First, no written constitution, however well it may have been drafted, may be immune from amendment owing to the simple reason that conditions always change. Second, the Party, through its Central Executive Committee, is exercising the sovereign rights on behalf of the people during the period of political tutelage.

## CHAPTER V

### THE "FIVE-POWER" THEORY

#### IMPORTANCE OF SEPARATION OF GOVERNMENTAL POWERS

JUST as specialization is the key to success in industry so separation of powers is an essential factor of political progress. In the days when governmental problems were simple and activities few, the king or chieftain did not feel himself burdened with work. But as problems became complicated and activities numerous, his functions were devolved upon his ministers, who constituted a royal council advisory in character to begin with. Then the functions of the council were expanded until they became distinctly legislative, executive and judicial; and at the same time the council grew so large in size that it ceased to be an advisory institution and asserted the right to act. What we know to-day as the Cabinet, the Parliament, the Privy Council or the High Court of Justice in England was once but the Norman *Magnum Concilium* or *Cyria Regis* or even the Anglo-Saxon *Witan*. It is true that for four hundred years commentators on the English Constitution have advanced the theory of the omnipotence of the English Parliament, but except in the realm of pure theory this is hard to reconcile with facts.<sup>1</sup> Owing to the part played by the Cabinet in finance and in legislation, the quick dissemination of news and ideas, the changes in the electoral system, the representation of special interests in the House of Commons and the idea of national referendum or mandate, the Parliament

<sup>1</sup> Ogg: English Government and Politics, p. 452.

has not only lost its powers to the Cabinet but also to the electorate.<sup>1</sup> "It will surprise many people," says Professor Ogg, "to be told that of late the balance has been inclining rather sharply against Parliament as the dominating, controlling agency in the state."<sup>2</sup> What is true in England is also true in Russia, where the wholesale union of functions in the Central Executive Committee underlying the Constitution of 1918 has been practically abandoned.<sup>3</sup> The main reason for this change, as was remarked by Professor Graham, seems to be the inability of such a system to function.<sup>4</sup> Complete fusion of powers is, therefore, impracticable if not intolerable. On the other hand, in view of the complexity of the modern social, political and economic life, separation of powers is generally deemed desirable and necessary.

#### DEVELOPMENT OF THE THEORY OF SEPARATION OF POWERS

The idea of separation of powers found its earliest expression in the work of the Greek philosopher Aristotle who classified governmental powers into (1) the deliberative, (2) the magisterial and (3) the judicial.<sup>5</sup> The first which was concerned with questions of practical policy and of general interest to the community related to war and peace, the conclusion of treaties and alliances, the infliction of the death penalty, exile and confiscation, the auditing of accounts and the making of laws. The second, those that are magisterial, had to do with the organization of the magistracy, the disposition of officers, their appointment and tenure, the filling of vacancies, the articula-

<sup>1</sup> Ogg: *op. cit.*, pp. 449-454.

<sup>2</sup> *Ibid.*, p. 449.

<sup>3</sup> Graham: *New Governments of Eastern Europe*, p. 147.

<sup>4</sup> *Ibid.*

<sup>5</sup> Marriott: *Mechanism of the Modern State*, Vol. I, pp. 379-380.

Gettell: *Readings in Political Science*, p. 329.

tion of functions, etc. The third, those that are judicial, corresponded roughly to the judicial powers of the modern state. In actual practice, however, the distinction was not actually observed.

In a vague way the Roman historian Polybius enunciated the same theory. According to him governmental powers in Rome were evenly distributed among three elements, namely, the Consuls, the Senate and the people. To the Consuls belonged the administrative authority which in war was absolute. To the Senate belonged the supreme authority in finance, in the settlement of disputes between tributaries, in foreign and colonial policy, and in the trial of cases of high treason and other serious crimes. To the people belonged the power to decide matters of life and death, to declare war or make peace, to ratify treaties and to act as the fountain of honor and of punishment.<sup>1</sup>

In his treatise on *The Republic* Bodin called attention to the danger of allowing the prince to administer justice in person and insisted that judicial powers should be entrusted to an independent tribunal.<sup>2</sup> "To be at once legislator and judge," he said, "is to mingle together justice and the prerogatives of mercy, adherence to the law and departure from it."<sup>3</sup>

During the period of the Protectorate in England a separation of executive and legislative functions was made in the constitution known as the *Instrument of Government*,<sup>4</sup> but the independence of the judiciary was not fully recognized.

John Locke, the political philosopher of the English Revolution, in his *Two Treatises of Government* went to the length of declaring that the power of government naturally divided themselves into those which are

<sup>1</sup> Gettell: op. cit., p. 381.

<sup>2</sup> Garner: Introduction to Political Science, p. 412.

Gettell: op. cit., p. 329.

<sup>3</sup> Quoted in Garner, op. cit., p. 412.

<sup>4</sup> Adams and Stephens: Select Documents of English Constitutional History, pp. 407-416.

legislative, those which are executive and those which are federative.<sup>1</sup>

It was in Montesquieu's *Spirit of Laws*, however, that the theory of separation of powers was clearly expounded. "In every government," he declared, "there are three sorts of powers: the legislative, the executive and the judicial. When the legislative and executive powers are united in the same person, or in the same body of magistrates, there can be no liberty. Again, there is no liberty if the judicial power is not separated from the legislative and executive powers. Were it joined with the legislative power, the life and liberty of the subject would be exposed to arbitrary control; for the judge would then be the legislator. Were it joined with the executive power, the judge might behave with violence and oppression."<sup>2</sup>

The views of Blackstone were very similar to those of Montesquieu. "Wherever the right of making and enforcing the law is vested in the same man or one and the same body of men," he remarked in his *Commentaries on the Laws of England*, "there can be no public liberty. The magistrate may enact tyrannical laws and execute them in a tyrannical manner, since he is possessed, in this quality of dispenser of justice, with all the power which he as legislator thinks proper to give himself.....

"Were it (the judicial power) joined with the legislative, the life, liberty, and property of the subject would be in the hands of arbitrary judges whose decisions would be regulated only by their opinions, and not by any fundamental principles of law; which though legislators may depart from, yet judges are bound to observe. Were it joined with the executive, this union might soon be an overbalance of the legislature."<sup>3</sup>

<sup>1</sup> Garner: op. cit., pp. 412-413.

Gettell: op. cit., p. 329.

<sup>2</sup> Montesquieu: *Spirit of Laws*, Book XI, Chapter 6, p. 152 (Colonial Press).

<sup>3</sup> Quoted in Garner: op. cit., p. 414 and Gettell: op. cit., p. 331.



In America, at the time of the framing of the federal constitution, the influence of Montesquieu and Blackstone was profound. Thus said Hamilton: "The accumulation of all powers, legislative, executive, and judicial, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed, or elective, may justly be pronounced the very definition of tyranny."<sup>1</sup>

"It is by balancing each of these three powers against the other two," said Adams, "that the efforts in human nature toward tyranny can alone be checked and restrained and any degree of freedom be preserved."<sup>2</sup>

Webster voiced the same sentiment when he said, "The separation of the departments so far as practicable, and the preservation of clear lines between them, is the fundamental idea in the creation of all our constitutions, and doubtless the continuance of regulated liberty depends on maintaining these boundaries."<sup>3</sup>

In one concise statement the Supreme Court laid down the same doctrine. "It is believed to be one of the chief merits of the American system of written constitutional law" it maintained, "that all powers intrusted to the government, whether state or national are divided into three grand departments, the executive, the legislative, and the judicial; that the function appropriated to each of these branches of government shall be vested in a separate body of public servants, and that the perfection of the system requires that the lines which separate and divide these departments shall be broadly and clearly defined."<sup>4</sup>

In revolutionary France, the constitution of 1791 was framed in accordance with the principle of separation of powers. It provided for a legislative assembly

<sup>1</sup> *The Federalist*, No. 46, p. 264.

<sup>2</sup> Quoted in Garner: *op. cit.*, p. 415, footnote No. 2.

<sup>3</sup> *Ibid.*

<sup>4</sup> *Ibid.* p. 416

not subject to the dissolution of the executive, a ministry debarred from occupying seats in the legislature, a king with no legislative initiative and with only a suspensive veto, and a judiciary chosen by popular vote.

### THE THREE-POWER THEORY, THE TWO-POWER THEORY AND THE FIVE-POWER THEORY

Aside from the fact that separation of powers may preserve liberty and prevent the rise of a despotic government, it fixes responsibility and secures specialization. Modern writers on government are, therefore, accustomed to differentiate governmental functions into those that are legislative, those that are executive, and those that are judicial.<sup>1</sup>

Though this is the opinion of the majority writers, advocates of the two-power theory are not lacking. Thus says Du Crocq, "the mind can conceive of but two powers: that which makes the law and that which executes; there is no place for a third power by the side of the other two."<sup>2</sup> In almost the same language asserts Pradier-Fodere: "there can be but two powers of government, that which administers (legislative) and that which applies (executive)."<sup>3</sup> Treitschke expresses the same view when he says, "the whole theory regarding the existence of three state powers and their separation from each other is a purely theoretical and fantastical conception." "It is better," continues he, "to recognize only two such powers: *Verfassung*, which embodies the totality of activities which have to do with the expression of the will of the state; and *Verwaltung*, which includes all those concerned with the execution of the

<sup>1</sup> Garner: op. cit., p. 407.

<sup>2</sup> Quoted in Garner: op. cit., p. 408.

<sup>3</sup> Ibid., footnote No. 3.

state will."<sup>1</sup> Duguit argues that the exercise of the pardoning power by the executive is a clear recognition of the dependence of the judicial power upon that of the executive.<sup>2</sup>

In America, the two-power theory also finds its supporters. Thus Professor Goodnow groups governmental activities into two classes: "politics" and "administration."<sup>3</sup> By the former he means those activities which have to do with the expression of the will of the state. Under the second category he puts those which have to do with the execution of that will.

Finally, there is the five-power theory which is advocated by Professors Dealey and Willoughby. The former classifies governmental functions into deliberative, administrative, executive, legislative, and judicial,<sup>4</sup> while the latter adds administrative and the electorate to the executive, legislative and judicial.<sup>5</sup>

### THE "FIVE-POWER" THEORY OF DR. SUN YAT-SEN

It was about thirty years ago that Dr. Sun Yat-sen, the Father of the Chinese Republic, delivered his first lecture on the "five-power" constitution before the Revolutionary Society or T'ungmênghui. What was viewed with indifference then has now become the fundamental aim of our nationalist movement and an accepted principle of our political reconstruction. In the formulation of this doctrine Dr. Sun owes much, on the one hand, to the western trinity theory of separation of powers long ago enunciated by Aristotle, Cicero and Polybius, elaborated by Montesquieu and Blackstone at a later time, and adopted by the framers

<sup>1</sup> Quoted in Garner: *op. cit.*, p. 409 footnote.

<sup>2</sup> Garner: *op. cit.*, p. 408 footnote No. 2.

<sup>3</sup> *Ibid.*, p. 409 footnote.

<sup>4</sup> Dealey: *Development of the State*, p. 144.

<sup>5</sup> Willoughby: *Government of Modern States*, p. 290.

of the American Constitution as a fundamental principle of their government towards the close of the eighteenth century. On the other hand, he is indebted to two native institutions centuries old, namely, the censorate and the civil service examination system. The theory is, therefore, a combination of occidental and oriental political tradition and experience.

In brief, the system of government to be set up in accordance with the "five-power" constitution<sup>1</sup> consists mainly of five yuan or councils, the legislative, the executive, the judicial, the censoring or control and the examination. The essential function of the legislature is to make laws for those subject to the jurisdiction of the state, that of the executive branch is to enforce such laws, that of the judiciary is to interpret their meaning and to apply them to particular cases, that of the control yuan is to supervise the conduct of governmental agents, and that of the examination yuan is to recruit governmental officers through a system of public examination. For each of these yuan there is a head, now called president, directing the activities of his own yuan. Provision is also made for a chief of state in the person of the president.<sup>2</sup> The president of the nation and the presidents of the five yuan are all to be elected at a national congress, consisting of delegates from districts into which the provinces are divided, one delegate from each district. The national congress is the representative organ of the electorate to which the president of the nation and the heads of the five yuan are responsible.<sup>3</sup> Being an organ of public opinion, through which the systems of election, initiative, referendum and recall are exercised, it is the reservoir of national sovereignty.

Each province<sup>4</sup> in the system is a liaison linking up the district governments on the one hand and the

<sup>1</sup> *Fundamentals of National Reconstruction*, art. 19.

<sup>2</sup> *Ibid.*, art. 21.

<sup>3</sup> *Ibid.*, arts. 14 and 23.

<sup>4</sup> *Ibid.*, art. 18.

national government on the other, represented by the president and the five yuan. Its position will, therefore, be less conspicuous and significant than it is now. In the distribution of powers between the national government and the provincial governments neither the American principle of decentralization nor the French principle of centralization is adopted. Powers of a national character are to be exercised by the national government; those pertaining to local affairs go to the provinces.<sup>1</sup>

It is significant to mention, however, that in his *Fundamentals of National Reconstruction* Dr. Sun maintains that this new scheme of government will be put into operation only when more than half of the provinces are ready for and capable of self-government.<sup>2</sup> This means that self-government should first be practiced in the districts, the units of local government. There the people elect their officers by the right of suffrage, participate in legislation by the right of initiative and referendum and remove incompetent governmental officers by the system of recall. His point is that the foundation of a true democracy has its basis in its local institutions, and that no people without adequate training and experience can be expected to operate a national democracy with success. In this respect, Dr. Sun well voices the sentiment of Lord Bryce, who remarks, "The best school of democracy, and the best guarantee for its success is the practice of local self-government."<sup>3</sup>

#### FEATURES OF THE "FIVE-POWER" GOVERNMENT

Such is the governmental structure under the "five-power" constitution. As a system of government, it

<sup>1</sup> *Fundamentals of National Reconstruction*, art. 17.

<sup>2</sup> *Ibid.*, art. 23.

<sup>3</sup> Bryce: *Modern Democracies*, Vol. I, p. 133.

embraces three important features. First, it is of the representative type, closely akin, in its main features, to that type of democracy which is being practiced in America and Europe, since, according to Dr. Sun, the "governing power" belongs to the five yuan.<sup>1</sup> The reason for this is not far to seek. Pure democracy or direct government is sound in principle but difficult in its practical operation. Especially in a country like China, characterized by vast territory and a large population, together with a high degree of illiteracy and a lack of political experience on the part of the masses, the difficulties of direct government would be insuperable. Even Switzerland, favored by its small size and the long political experience of its people, remains a democracy of the indirect type, making use, however, of the devices for direct legislation known as the initiative and the referendum. The "five-power" constitution, therefore, vests the "governing power" in the five yuan and the "political power" or sovereignty in the National Congress.<sup>2</sup> It is the National Congress that exercises such political rights of the people as the election of officers of the national government, the initiative, referendum and recall. In this respect, China's representative government differs from that in Europe. For while legislative supremacy is maintained in England and France, the doctrine of the supremacy of the National Congress is maintained in China. This, it is to be noted, coincides with the Russian system of democracy in which the Union Congress is the supreme organ of the U.S.S.R. (Union of Soviet Socialist Republics) to which the Council of People's Commissars is theoretically responsible.<sup>3</sup>

In the second place, the new constitutional system aims to create an independent control yuan charged

<sup>1</sup> Sun Yat-sen: *Doctrine of Popular Sovereignty*, 6th lecture.

<sup>2</sup> *Fundamentals of National Reconstruction*, art. 24.

<sup>3</sup> Munro: *Governments of Europe*, p. 769.

Graham: *op. cit.*, p. 133.

with the two special functions of impeaching and auditing. According to the constitutional practices of American and European countries the power of impeachment is usually vested in the legislature, that of initiation in the lower chamber and that of trial in the upper chamber. In the exercise of this power against the chief executive or the ministers, the legislature is more or less restricted by constitutional provisions to the effect that impeachments may be brought up only on specific grounds, such as treason, bribery, or other high crimes or misdemeanors. For less serious offenses, the system of asking questions or of interpellation is practiced. Thus in England a certain time is set apart at the beginning of each daily sitting for questions<sup>1</sup> which, however, should involve no "argument, inference, imputation, epithet, or ironical expression."<sup>2</sup> Though no debate or vote usually follows, any forty members may precipitate a discussion of a minister's reply and a debate will thereby be arranged. In France the practice of both asking questions and demanding interpellations is followed,<sup>3</sup> the latter being always closed by a vote. In Germany, questions must be in written form,<sup>4</sup> but no discussion or vote follows. Interpellations may be proposed by any thirteen members without being followed by debate unless it be demanded by fifty members.<sup>5</sup>

That the maintenance of a system of checks and balances is wholesome for a representative government is probably without dispute; but for the legislature to supervise the conduct of executive officers seems to be impracticable.<sup>6</sup> First, it is difficult for the executive

<sup>1</sup> Munro: *op. cit.* p. 172.

Lowell: *Government of England*, Vol. I, pp. 331-333.

<sup>2</sup> Munro: *op. cit.*, p. 173.

<sup>3</sup> *Ibid.*, pp. 482-483.

<sup>4</sup> *Ibid.*, p. 636.

<sup>5</sup> *Ibid.*

<sup>6</sup> Hsien: *Outlines of the Five-Power Constitution*, pp. 46-47 (in Chinese).

to serve two chambers at the same time, in case of a bicameral legislature, without pleasing the one and displeasing the other. Second, since the executive is under normal circumstances always supported by the majority party, there is very little hope for the party in opposition to bring to success any case of impeachment. On the other hand, if the opposition should be in power, it would very likely take every opportunity to oust the existing government, and thus even a good government might be overthrown. Third, the legislature is primarily a law-making body. For it to supervise the activities of the executive officers would divert its time and energy from intelligent legislation. Fourth, the legislature is a partisan body. Holding the power of impeachment it may use it as a weapon or means to promote the interests of the legislators without considering the interests of the nation at large. The creation of a separate control yuan may, therefore, not only secure the independence of its work but also give it adequate time to scrutinize the work of the agents of government.

As to the work of the auditor, so important in the field of national finance, the creation of a separate board in the control yuan is felt necessary so as to maintain its independence.

The third feature of the "five-power" constitution is the examination yuan. Its function is the choice of governmental officers through a system of examination. It is the idea of Dr. Sun that no person should be appointed to a governmental post without passing an examination and that even after appointment he may be removed from office by the executive yuan if his work proves to be unsatisfactory. In countries where officers of the government are chosen by executive appointment or by popular election, there is the serious disadvantage of personal favoritism or fickleness of public opinion. In western countries where the civil service examination is employed, it is conducted



under the auspices of the executive department and therefore lacks the quality of independence. To vest the power of choice in the examination yuan and the power of determining the competency of those successful at the examination in the executive yuan would prevent the executive yuan from employing incompetent officers and the examination yuan from appointing unqualified ones. The merit of the examination yuan, aside from its independent character lies, in the dividing of the power of choice of men and the power of determining their competency between the examination and the executive yuan.

#### THE SYSTEM OF GOVERNMENT UNDER THE ORGANIC LAW, 1928-1931

The system of government in accordance with the Organic Law promulgated on October 4, 1928,<sup>1</sup> is of a transitional character specially adopted for the tutorial stage, to use the expression of Dr. Sun, in preparation for the government of the constitutional stage. In essence, the two systems bear a close resemblance to each other and are closely related; in practice the system under the Organic Law presents two marked points of difference from the government of the constitutional period. First, it embodies no National Congress. In place of it are the Central Political Council of the Central Executive Committee and the Central Executive and Supervisory Committees of the Nationalist Party. Second, the single executive in the person of the president is replaced by the State Council of from twelve to sixteen members and a

<sup>1</sup> *China Weekly Review*, October 13, 1928, p. 224.

*Far Eastern Review*, October, 1928, p. 443.

Though it was revised at the Fourth Plenary Session of the Central Executive Committee and the Supervisory Committee of the Nationalist Party in November, 1930, the fundamentals remain the same. One important exception to this is the fact that the chairman of the State Council is concurrently the president of the Executive Yuan.

president (chairman). (The presidents and vice-presidents of the five yuan are concurrently members of the Council.) It is fundamentally due to the first difference that the system is not intelligible to the ordinary citizen. The organization of the Political Council serves as one illustration. It is an institution consisting of members of the Central Executive Committee and of the Supervisory Committee of the Party, members of the State Council and those recommended by the Central Executive Committee, (reconstructed since Dec. 1931) and is empowered to deal with such problems as fundamentals of national reconstruction, principles of legislation, administrative policies, general plans for national defense, financial programs, selection of the chairman and members of the State Council, presidents and vice-presidents of the various yuan, etc. (The last function is now being exercised by the Central Executive Committee of the Party.) Dr. Sun's idea is, that before the creation of the National Congress, which is the supreme organ of the constitutional period, sovereign powers should be vested in the Party. The Party, through its Central Executive Committee, accordingly, performs the functions of a trustee. The installation of the Political Council, a product of the Party as well as an organ of the Government, is intended to serve as a connecting link between the Party and the Government.

In the second place, the system is characterized by the fact that no clear distinction is made between the Party and the Government. The Political Council is neither an organ of the Party nor an institution of the Government, pure and simple, and yet it is both. (But it was made an institution of the Party at the First Plenary Session of the Central Executive and Supervisory Committees of the Fourth National Congress of the Kuomintang, Dec. 1931.) Because of this, it is difficult to distinguish the "political power" of the people from the "governing power" of the Government.

However, the respective spheres of the Party and the Government during the period of political tutelage, 1930-1935 inclusive, were defined by the Standing Committee of the Central Executive Committee of the Nationalist Party on October 3, 1928 in a body of six principles. These six principles confirmed by the Third National Congress of the Nationalist Party on March 19, 1929, are: "(1) During the period of Political Tutelage, and until the People's Convention (National Congress) can be called into being, the National Congress of the Kuomintang shall act for the Chinese people in the exercise of their political rights. (2) When the National Congress of the Kuomintang is not in session, the political rights shall be exercised by the Central Executive Committee of the Kuomintang. (3) The people shall be taught to exercise gradually the rights of suffrage, recall, initiative and referendum as provided in Dr. Sun's *Fundamentals of National Reconstruction*; in order to prepare the way for constitutional government. (4) The exercise of executive, legislative, judicial, examination, and control powers shall be delegated to the National Government, so as to lay the foundations for representative government in the Constitutional Period. (5) The direction and control of the National Government in the administration of important state affairs shall be entrusted to the Central Political Council of the Central Executive Committee of the Kuomintang. (6) The Organic Law of the National Government of the Republic of China may be amended and elucidated by resolution of the Central Political Council of the Central Executive Committee of the Kuomintang."<sup>1</sup>

In the third place, the system marks a departure from the principles of cabinet and presidential governments in the solution of difficulties between the executive and the legislature. In England and France, where

<sup>1</sup> T'yu: *Two Years of Nationalist China*, pp. 34-35.

the cabinet system is used, the executive is responsible to the legislature. The prime minister and the ministers remain in office as long as they hold the confidence and support of the majority of the legislature. If they should lose support, generally indicated by a vote of want of confidence, they either resign or else dissolve the legislature. This results in a new cabinet or a new legislature, depending upon the outcome of the parliamentary election. In the United States, where the presidential system is in force, the members of the cabinet are directly responsible to the President and not subject to the rise and fall of the Party in the Congress. In the case of England and France, the conflict between the executive and the legislature is solved either by a resignation of the cabinet or a dissolution of the legislature. In the United States, because of the absence of the power of dissolution on the part of the executive, it is only to be solved at the time of Congressional elections. In China, though the Executive Yuan is given the privilege of introducing measures into the Legislative Yuan, any controversy between them is to be settled by the State Council in accordance with article twelve of the Organic Law, which reads:

- "All matters which cannot be settled between two or more of the yuan shall be referred to the State Council for decision."

For the State Council which is to all intents and purposes the chief executive of the nation to settle differences between the yuan constitutes another characteristic of the system. In short, the involved intricacy of the governmental machinery, the absence of a clear distinction between the Party and the Government, and the departure from the principles of cabinet and presidential governments characterize the system of government in China under the Law of 1928.

THE GOVERNMENT UNDER THE PROVISIONAL  
CONSTITUTION, TO BE EFFECTIVE  
FROM JUNE 1931-1935

As has been remarked elsewhere in this volume, one of the outstanding features of the Provisional Constitution is its brevity in the structure and organization of the government. The Provisional Constitution only makes provision for a "five-power" government, leaving all the details to be determined by law. Accordingly, three noticeable changes were introduced into the Organic Law of October, 1928 by the Fifth Plenary Session of the Central Executive and Supervisory Committees of the Third National Congress of the Kuomintang in June, 1931. The first is with reference to the National Government, which is represented not only by the five Yuan but also various Commissions and Ministries (art. 9 of the revised law governing the organization of the National Government, June, 1931).<sup>1</sup> Second, the size of the State Council is enlarged so that it includes from 16 to 32 Councillors with the President of the National Government, the Presidents and Vice-Presidents of the five Yuan as *ex officio* members (art. 10).<sup>2</sup> Third, the Presidents and Vice-Presidents of the five Yuan, the Vice-Commander-in-Chief of the land, naval and air forces, and the heads of the various Ministries and Commissions shall be appointed or dismissed in accordance with law by the National Government at the instance of the President of the National Government (art. 16).<sup>3</sup> Of course, the decision that the President of the National Government shall concurrently be the President of the Executive Yuan made by the Fourth Plenary Session of the Central Executive and Supervisory Committees of the Kuomintang in November, 1930, is an exceedingly important change, a change

<sup>1</sup> Cf. art. 3 of the Organic Law of October, 1928.

<sup>2</sup> Cf. art. 6 of the Organic Law of October, 1928.

<sup>3</sup> Cf. arts. 7, 17, 18 of the Organic Law of October, 1928.

which made the system of government more or less of the presidential type.

The Organic Law of 1928 was further revised at the First Plenary Session of the Central Executive and Supervisory Committees of the Fourth National Congress of the Kuomintang in December, 1931. Significant changes were brought about. Firstly, the President of the National Government is made a nominal head, bearing no political responsibility, while the President of the Executive Yuan, similar to the prime minister in cabinet-government countries, is to assume the role of a real executive (art. 10 of the revised law of Dec. 1931). The system is, however, not exactly of the cabinet type. For the Executive Yuan is not responsible to the Legislative Yuan but to the Central Executive Committee of the Kuomintang. Secondly, the heads of the administrative departments and commissions of the Executive Yuan are given the privilege of attending the meetings of the Legislative Yuan so as to maintain some sort of relationship between the executive and the legislature (art. 29). Thirdly, half of the members of the Legislative and Control Yuan are to be elective so that these two bodies may be made at leastly partially responsible to the people (arts. 30 and 48).<sup>1</sup> In connection with these alterations two points were made clear at the session. First, the Presidents and Vice-Presidents of the various yuan, the ministers and chairmen of various ministries and commissions are not allowed to serve as State Councillors concurrently. Second, those who are active in military service are also debarred from occupying seats in the State Council.

Other changes regarding the structure of the government which were not stipulated in the revised law are those relating to the Central Political Council and the

<sup>1</sup> This quasi-elective plan was discarded at the Third Plenary Session of the Central Executive and Supervisory Committees of the Fourth National Congress of the Kuomintang held in December, 1932. To-day the members of the Legislative and Control Yuan are all appointive.

Judicial Yuan. The Central Political Council is to be composed solely of members of the Central Executive and Supervisory Committees of the Nationalist Party. (Formerly, the Council consisted of two other elements as well, namely, members of the State Council and those recommended by the Central Executive Committee of the Party.) The Ministry of Justice, formerly under the Judicial Yuan, is made an administrative department of the Executive Yuan.

So far as the distribution of powers between the central and local governments is concerned, the Provisional Constitution stipulates that it shall be made in accordance with article 17 of the *Fundamentals of National Reconstruction*, that is, affairs of a national character shall be reserved for the central government and those of a local character shall be reserved for the districts. The tendency in China at present is, towards centralization. For the District Governments are under the supervision of the Provincial Governments and the Provincial Governments under the supervision of the Central Government (arts. 78 and 81).

#### THE FUTURE GOVERNMENT OF CHINA— THE GOVERNMENT OF THE CONSTITUTIONAL STAGE

Just what will be the government of China in the future is a question which students of Chinese government are in the habit of asking to-day. In spite of China's limited experience in the operation of the "five-power" government, the answering of such a question in the light of the principles of constitutional government and of the teachings of Dr. Sun Yat-sen would not simply be of purely academic interest but also of practical importance. It is deemed desirable, therefore, that the following points should be brought into consideration. In the first place, Dr. Sun's scheme involves a National Congress (Kuo Min Ta Hui)

which is to consist of about two thousand delegates from the districts (1993 in all). For such a large size body, whose session is to last only for a few weeks, to exercise the sovereign rights of the nation would be both unwise and impracticable. Therefore, an institution of a much smaller size, say, a central executive committee, would seem to be desirable. That body will take the place of the Central Executive Committee and the Political Council of the Party, now holding the reins of government. Being their successor, it should be empowered to exercise the functions of the National Congress (Kuo Min Ta Hui) when the latter is not in session. In fact, the work of the National Congress can hardly be anything more than the ratification of the work and the adoption of the recommendations of its Central Executive Committee in view of the large size and short session of the Congress.

The election of the Congress shall take place biennially as is the case with the National Congress of the Nationalist Party at present. As to the system of election, the single member district method proposed by Dr. Sun Yat-sen seems to be the most satisfactory.

The second point is the organization of the executive department. In view of the past civil wars which have largely been a contest for the much coveted office of president, it is not without reason that a plural executive in the form of the State Council should be instituted. But this danger is no longer to be feared, since the President is to be elected by the National Congress, and no person who does not command the respect of the nation is likely to win the election. Moreover, the State Council, as now constituted, consists of more than thirty members. It not only gives the President a chance to shift his responsibility, but it also retards business.

According to Dr. Sun's *Fundamentals of National Reconstruction* the President is to be elected by the National Congress. Whether or not the National



Congress will turn out to be an electoral college of the American type matters little, for when the people have enough electoral experience popular election may not be objectionable.

The question as to whether or not the President of the National Government should concurrently be the President of the Executive Yuan is an interesting one. According to the Organic Law promulgated in October, 1928, he is not. But at the Fourth Plenary Session of the Central Executive and Supervisory Committees of the Nationalist Party in November, 1930 he was made to hold both positions. The President of the National Government would, therefore, be of the American type, that is, a strong executive. If the two positions should be held by two different persons, the President would most likely be a figurehead. For hardly could two strong executives govern at the same time without conflict of authority. It is to be noted that according to the revised law of December, 1931 governing the organization of the National Government, the two positions are to be held by two different persons. The presidential system of government is thereby discarded.

In close connection with the organization of the executive is the organization of the legislature. According to the Organic Law the Legislative Yuan is of the unicameral type, consisting of from forty-nine to ninety-nine members, all appointed by the National Government upon the recommendation of the President of the said yuan. As to the manner of choice of the legislators, there is no question that they should be elective. (Of course, only those who pass the prescribed examination may offer themselves for election.) For it is only through popular election that they may be made directly responsible to the people, and that legislative measures may be enacted in accord with public opinion. Moreover, the Legislative Yuan under

the "five-power" system, like the legislatures under any other system of government, is not only to legislate but also to determine and control such important governmental policies as the ratification of treaties, declaration of war, taxation and budget, etc. The proposal that the legislators should be elected by the National Congress or its Central Executive Committee is defective in that the proposed plan has the disadvantages of the long ballot system. It is interesting to note, however, the proposal that the legislators should be appointive. The chief argument for this plan is that the Legislative Yuan should not be a partisan body but an organ of experts.

As to the organization of the legislature, opinions also differ. On the one hand, it is well apprehended by the Chinese that a movement is going on in Europe for unicameral legislatures. The legislatures of Bulgaria, Jugoslavia, Norway, Finland, Esthonia, Latvia and Lithuania are constructed on that basis. On the other, it has been noted with interest that countries like England, France, Germany, Italy, and the United States have retained the bicameral system. Regardless of all the advantages inherent in the unicameral system and the disadvantages of the bicameral system or vice versa, a bicameral system would seem to be more suitable to Chinese conditions at present. One eminent Chinese writer says, among other things, that "it is wise.....to provide a reservoir for talents, experience, and special qualities otherwise difficult to obtain in a popularly elected chamber."<sup>1</sup> But after the tutorial period the unicameral system should be adopted. This is because of two reasons. First, the acquisition of legislative experience in the tutorial period may not require a second chamber which is to perform revising functions. Second, since the Legislative Yuan is responsible to the National Congress and since one

<sup>1</sup> Bau: *Modern Democracy in China*, p. 206.

of the functions of the Congress is to determine the principles of legislation, there is no fear of a despotic single chamber.

In constitution, the general ticket system seems to be more satisfactory in view of the fact that there are so many districts in China at present. In order to avoid the evils of majority representation, however, a system of proportional representation to be worked out by law should be adopted.

As no two other departments are so closely connected with each other as the executive and the legislature, the working relations between these two institutions should be carefully regulated. Though the English principle of legislative supremacy would violate the spirit of the "five-power" system, it does not seem to be inappropriate that the real executive, either the President of the nation or the President of the Executive Yuan, should be vested with the power of introducing measures to the Legislative Yuan. Not only that, but the heads of Commissions and Ministries should also be given the privilege to occupy seats in the legislature for the explanation and defense of executive policies and for the introduction of legislative measures. Since both institutions are under the direction of the National Congress or its Central Executive Committee, and the National Congress is the supreme organ of the nation, it is but natural that concentration of powers in the Legislative Yuan should not be tolerated. For the same reason, complete separation which characterizes the American system should also be avoided.

As to the relation between the Central Government and the Provincial Governments, a clearer definition is needed, for Dr. Sun proposes only that the Provinces are to serve as the connecting link between the nation and the districts. In view of the fact that uniformity or regularity is urgently needed in matters like education, law, weights and measures, communications, currency and taxation, a policy of centralization seems to be

highly desirable. Fortunately, the present tendency in China is inclined in that direction.

Finally, the question as to whether or not the provinces should also be organized on the "five-power" basis has been raised. For three reasons, the answer should be in the negative. Firstly, the existence of five separate institutions in the provinces instead of two, as is the case now, would impose an additional financial burden on the provincial treasury, and is, therefore, uneconomical. Secondly, the "five-power" machinery, especially its practical operation, is not so simple a matter as to be understood by the ordinary citizen. Moreover, the problems of the provinces are simpler than those of the nation. There is no necessity for a "five-power" government. Thirdly, if the provinces should have a machinery as elaborate as that of the National Government, they could not be expected to serve as a liaison between the nation and the districts. Instead, they, rather than the districts would be the fundamental units of local government, a condition contrary to the *Fundamentals of National Reconstruction*. At the same time, the position of the districts would be relegated to insignificance. In view of the expensiveness and complexity of the "five-power" scheme and the inevitable result of weakening the position of the districts, an independent judiciary, together with a combined executive and legislature, would be sufficient for purposes of provincial administration and legislation. This does not mean, however, that the officers in the provinces are to be immune from supervision and examination. Neither will the controlling and examination functions be exercised by the provincial legislature and executive. What is desired is that the National Government itself will conduct the civil service examinations and supervise the conduct of provincial officers. This will not only avoid duplication in governmental machinery but will also secure economy and efficiency.

FUSION OR SEPARATION OF POWERS? <sup>1</sup>

The positions of the five Yuan and of the National Congress, or its Central Executive Committee, remain to be considered before closing this chapter. Since the National Congress is a representative body of the people, the legal sovereign, it should be given the power to adopt the permanent constitution, to offer amendments to the same, to determine the fundamental policies of the nation and principles of legislation, to exercise the rights of election and recall of the officers of the National Government (the presidents of the various yuan for example), initiative and referendum concerning national legislation, and to settle disputes that may arise among the various yuan. On the other hand, the powers of the respective yuan should not be unreasonably restricted. It is true that the impeachment power is taken away from the legislature and the examination power from the executive; still the Legislative Yuan should be vested with those powers relating to war and peace, treaty-making, budget approval, taxation and other matters in addition to legislation, and the Executive Yuan with the ordinary powers of national administration. For concentration of powers in the National Congress may result in despotism or in one-power government, thereby defeating the purpose of the "five-power" constitution. It is safe to conclude, therefore, that while the supremacy of the National Congress is unquestionable, the Congress, in the exercise of its powers, should be guided by laws and the five yuan should be given ample powers in the performance of their duties. Of course, some sort of articulation should be maintained among the various yuan in spite of their distinctive functions.

<sup>1</sup> See the chapter on "Articulation of Governmental Power" in MacIver, *The Modern State*, pp 364-390.

## CHAPTER VI

### THE NATIONAL GOVERNMENT

#### THE ORIGIN AND SCOPE OF THE NATIONAL GOVERNMENT

HAVING discussed the theory of the "five-power" constitution and the system of government under the Organic Law and the Provisional Constitution, it is but fitting and proper to describe the various governmental institutions now at work, their inter-relationships as well as their structure.

The first thing that engages our attention is the National Government.<sup>1</sup> The idea of a National or Nationalist Government originated in the First National Congress of the Kuomintang, which met in Canton in January, 1924. In that memorable gathering a resolution was adopted urging the organization of a Nationalist Government with a view to the eventual carrying out of the program of the Party.<sup>2</sup> Accordingly, on July 1st of the next year, the Nationalist Government was organized in Canton with Mr. Wang Ching-wei as chairman.<sup>3</sup> In January, 1927, when the Nationalist troops were advancing northward and capturing one city after another, the Nationalist Government moved its headquarters to Hankow. But there the Government was under radical influences. In less than half a year, therefore, the seat of the

<sup>1</sup> The article "How the National Government in Nanking Works" by Yen-ying Lu is of pertinent reading. See *Chinese Social and Political Science Review*, Oct., 1933, pp. 442-456.

<sup>2</sup> For the program of the Party see Chapter XIV, pp. 282-285.

<sup>3</sup> See Chapter III, p. 89.

Government was transferred to Nanking (April, 1927), where General Chiang Kai-shek and other members of the Kuomintang, who are moderate in their political views, established a new regime. With the promulgation of the Organic Law in October, 1928, the Government of the Republic assumed the title National Government.<sup>1</sup>

According to the Provisional Constitution the National Government is to be composed of a President, a certain number of State Councillors to be determined by law (art. 72), the five Yuan—the Executive, the Legislative, the Judicial, the Control, and the Examination, and various Ministries and Commissions (art. 71). At the First Plenary Session of the Central Executive and Supervisory Committees of the Kuomintang held in December, 1931, a revised law governing the organization of the National Government was worked out, which stipulated that there shall be from 24 to 36 State Councillors (art. 10), and that other offices under the jurisdiction of the National Government may be created if necessary (art. 9). In an analytical sense therefore, the National Government is represented by the President, the State Council of from 24 to 36 members, the five Yuan and various Ministries and Commissions. Collectively, it is simply the designation of the Central Government at Nanking in contradistinction to the Local Governments—the governments in the provinces, districts and municipalities.

### THE POWERS OF THE NATIONAL GOVERNMENT

The Provisional Constitution vests all the governing powers in the National Government (art. 65), which include the supreme command of the land, naval and air forces (art. 66), the power to declare war, to negotiate peace, and to conclude treaties (art. 67), the power of granting amnesties, pardons, reprieves, and restitution of civic rights (art. 68), the power to confer titles

<sup>1</sup> Tyau: *Two Years of Nationalist China*, p. 36.

of honor (art. 69), and the power to compile and promulgate the national budget (art. 70). The revised Law of December, 1931 further stipulates that the five yuan shall independently exercise their respective governing powers—the executive, legislative, judicial, control, and examination powers (art. 8). But neither the Provisional Constitution nor the Law of 1931 attempts to define the jurisdiction of the National and Local Governments. The distribution of powers between the nation and the provinces, according to the Provisional Constitution (art. 59), is to be made in accordance with article 17 of the *Fundamentals of National Reconstruction*, which reads: "During the period of constitutional government, the powers of the Central Government and those of the Provinces shall be evenly distributed. Affairs of a national character shall be reserved for the Central Government and those of a local character shall be reserved for the districts. The system is neither a centralization nor a decentralization." The powers of the National Government, as prescribed in the Provisional Constitution and the Law of 1931, are, therefore, simply for the period of political tutelage, serving, however, as a basis for determining the jurisdiction of the Central Government of the constitutional period.

In view of the present conditions in China which are characterized by political dissensions and financial disorganization decentralization is utterly undesirable. For it would not only weaken the position of the Central Government but would also hasten the process of national disintegration. Hence the possession by the Central Government of all powers relating to foreign relations and international intercourse, taxation and citizenship, war and peace, foreign commerce, coinage, patents and copyrights, weights and measures, posts and telegraphs, railways and public roads, law and education, is highly necessary, though provincial powers should also be guaranteed in the constitution in



order to insure the development of the provinces. In the matter of determining the scope of powers of the National and Local Governments, Dr. Sun Yat-sen endeavored to maintain an equilibrium. But the creation of a central government strong enough to carry out its policies and to achieve real national unity without at the same time infringing the autonomy of the provinces seems to be an even greater need in present-day Chinese politics.

### THE PRESIDENT OF THE NATIONAL GOVERNMENT

The President of the National Government can be best described as one who "neither reigns nor governs." He is that type of executive who bears no actual political responsibility, though both internally and externally he is the official spokesman (art. 11 of the Law of December, 1931). He is chosen by the Central Executive Committee of the Kuomintang for a term of two years and is eligible for another term in case of being reelected (arts. 10 and 13). A new election to be conducted in accordance with laws must be held, however, when the permanent constitution is promulgated (art. 13). This means that even if one is in the middle of his term, he must vacate his seat.

Opinions are hopelessly divided as to the manner of choosing the President of the constitutional period. Those who are influenced by the theory of popular election are in the habit of citing Dr. Sun's remark in *The Chinese Revolution* that "After the adoption of the constitution the people in all the districts will elect a President to organize the Executive Yuan ....." On the other hand, there are those who hold that the national executive should be indirectly elected. They also quote Dr. Sun's *Fundamentals of National Reconstruction*, which states that "As soon as the constitution is promulgated, the administration of the Central

Government shall be vested in the National Congress. In other words, the National Congress shall have the power to elect and recall officials of the Central Government as well as to initiate laws and veto laws promulgated by the Central Government" (art. 24). Since the *Fundamentals of National Reconstruction* was written after *The Chinese Revolution* and since the President is an officer of the Central Government, it is without question that he should be elected by the National Congress (Kuo Min Ta Hui).

The President performs two functions. First, the Presidents of the respective Yuan and the Ministers and Chairmen of various Ministries and Commissions are appointed and removed by the National Government in accordance with law at the instance of the President of the National Government (art. 74 of the Provisional Constitution). In addition, all laws are promulgated and all mandates are issued in his name (art. 75 of the Provisional Constitution). The Law of 1931 requires, however, that a mandate, in order to be valid, must be countersigned by the appropriate President (of the Yuan) or Minister (art. 14).

The President is indeed a figurehead. That he is intended to be such is shown by the fact that he is debarred from holding any concurrent position<sup>1</sup> (art. 12 of the Law of 1931), and that he is not given any constitutional powers. Nevertheless, the President is not without his usefulness. Firstly, since he does not take an active part in the administration of the affairs of the state, he has the leisure to reconsider those problems which the presidents of the yuan and the ministers of the departments may have hastily considered. Secondly, owing to his neutral character, he is in a favorable position to harmonize the working

<sup>1</sup> According to the Law of 1928 he was concurrently the Commander-in-Chief of the land, naval and air forces of the Republic, and according to the decision of the Fourth Plenary Session of the Central Executive and Supervisory Committees of the Kuomintang in November, 1930 he was concurrently the President of the Executive Yuan.

of the yuan in case they should fall in dispute. In view of the popularity of the cabinet system in Europe and the indebtedness of the Chinese Provisional Constitution to European constitutions, it is very probable that the cabinet system will be retained in China. On the other hand, when one takes into consideration the possible danger of hostile attack from China's near neighbor (the South Manchurian Railway and Shanghai incidents are clear instances) and the desirability of instituting a stable government so as to pursue a continuous and consistent policy, the alternate system—the presidential system, seems to be more desirable.

Since the promulgation of the Organic Law in October, 1928, which instituted the "five-power" government, two persons have been elected to that office of President—General Chiang Kai-shek (1928–1931) to whom is attributed the success of the northern expedition, and Lin Sen (1931–), the present national executive, who formerly served as Acting President of the Legislative Yuan.

### THE STATE COUNCIL

The State Council, of which the President of the National Government is the chairman, is a plural executive, consisting of from 24 to 36 State Councillors, all elected by the Central Executive Committee of the Kuomintang.<sup>1</sup> For the first three years of the existence of the Council, the Presidents and Vice-Presidents of the five Yuan served as *ex officio* members. At the First Plenary Session of the Central Executive and Supervisory Committees of the Kuomintang, which was held in December, 1931, a change was made to the effect that the Presidents and Vice-Presidents of the five Yuan, the heads of various Commissions and

<sup>1</sup> Arts. 10 and 16 of the Law of December, 1931. As it was first organized, the Council consisted of 16 members only.

Departments, as well as those who are active in military service, shall cease to hold concurrent positions in the State Council.<sup>1</sup>

From the standpoint of its composition and function, the State Council occupies a unique position. On the one hand, it resembles the Swiss Federal Council in that it is a policy-framing organ. On the other, it differs from the Swiss plural executive (which is a cabinet in everything but name), because it is not composed of the heads of administrative departments, but of persons who have nothing to do with the actual administration of government affairs.

Except in the realm of arbitration,<sup>2</sup> the utility of the State Council is very slight. In fact, even its abolition would not be too radical a measure to be undertaken. Two reasons will explain this. Firstly, being a titular head, the President of the National Government is in no need of an advisory council. Secondly, since the Presidents and Vice-Presidents of the five Yuan are debarred from occupying seats in the Council, it is impossible for the Council to render any positive service to the Yuan, especially in coordinating their work when coordination is desired. Though the National Government conducts its business through the State Council, yet in no case is the Council to be immune from the supervision and control of the Central Political Council.<sup>3</sup>

The commission form of government may work successfully in other countries. So long as the Chinese national executive, the President of the National Government, remains a figurehead, it does not seem to be of any use. Judge Story advocated "a single executive" and "a plural legislature." Alexander Hamilton

<sup>1</sup> See p. 134.

<sup>2</sup> Art. 17 of the Law of December, 1931 reads "All matters which cannot be settled between two or more of the yuan shall be referred to the State Council for decision."

<sup>3</sup> See the resolution adopted at the Third National Congress of the Kuomintang in March, 1929, p. 131.

considered "energy in the executive"....."a leading characteristic in the definition of good government." In order to secure unity of action, singleness of purpose and fixation of responsibility, a single executive is much to be preferred in China.

### THE FIVE YUAN

The Executive, the Legislative, the Judicial, the Control and the Examination Yuan are the mainstay of the "five-power" political system, through which the governing powers of the nation are exercised. Each has a President and a Vice-President, elected by the Central Executive Committee of the Kuomintang, and a certain number of departments or commissions created in accordance with law. Though the five Yuan are individually responsible to the Central Executive Committee of the Kuomintang and exercise independently their executive, legislative, judicial, control and examination powers, yet provision is made that the Presidents of the Yuan as well as the heads of the administrative departments may attend the meetings of the Legislative Yuan. This, be it noted, is simply an effort to maintain the independence of the Judicial, Control and Examination Yuan on the one hand, and on the other to secure the coordination of the Legislative and Executive Yuan—the formulating and enforcing organs of the will of the state.

### THE CENTRAL POLITICAL COUNCIL

In spite of the theory of party supremacy during the period of political tutelage, the Party, being vested only with the power to supervise and direct, cannot administer and govern. In order to link up the Party which is vested with the political power, and the Government which is vested with the governing or administrative power, the Central Political Council was brought into existence. As it was first organized, it was a

composite body, containing not only members of the Central Executive and Supervisory Committees of the Party but also State Councillors and those who have rendered meritorious services to the Party or the Government, upon the recommendation of the Central Executive Committee.<sup>1</sup> It is charged with the specific duty to decide upon matters concerning fundamentals of national reconstruction, principles of legislation, administrative policies, national defense, financial programs, etc. To the Central Executive Committee of the Kuomintang, however, it bears its ultimate responsibility.<sup>2</sup>

In two respects the Council is serviceable. First, it creates a sense of collective responsibility which will enable the Party and the Government to render their best services to the nation. Second, as an intermediate organ between the Party and the Government, it may reduce any friction that may arise between them. On the other hand it produces two undesirable consequences. First, by assuming the political responsibility of the Government, the Council impairs its independent character. Second, by mingling the Party and the Government, the Council makes the political sovereign at the same time the administrator, thereby destroying the distinction between political powers and governing powers advocated by Dr. Sun Yat-sen. Since December, 1931 the Council consists solely of members of the Central Executive Committee of the Kuomintang and ceases to be a combined organ of the Party and the Government. In view of the fact that the National Government is at present responsible to the Central Executive Committee of the Kuomintang, the Central Political Council seems hardly necessary. Neither is it needed in the constitutional period. For by that time

<sup>1</sup> See p. 130 *supra*.

<sup>2</sup> See the resolution adopted at the Third National Congress of the Kuomintang in March, 1929, *The Manifesto and Resolutions of the Third National Congress of the Kuomintang*, compiled by the Publicity Department of the Central Executive Committee of the Kuomintang, pp. 45-46 (in Chinese).

the National Government will be responsible to the Central Executive Committee of the National Congress (Kuo Min Ta Hui).

### OTHER INSTITUTIONS

In addition to the office of the President, the State Council, the five Yuan and the Central Political Council (now a purely party organization), there are other establishments which are under the jurisdiction of the National Government and are independent of any Yuan. Intended to facilitate the work of the National Government and to perform such functions as cannot very well be assigned to the five Yuan, they are bound to be diversified in character both organically and functionally. Among such institutions the following may be mentioned.

(1) *The Department of Civil Affairs*, headed by a Chief Secretary, takes charge of all documents and directs the printing projects of the National Government. The work is divided between the Secretariat and the Printing Bureau. The Secretariat is to receive and despatch, to draft and translate, to distribute and preserve official documents; to fix the agenda of the meetings of the National Government and to compile their proceedings; and to deal with matters relating to the promulgation of laws, the custody of seals, and recording the appointment and removal of officers of the National Government. The Printing Bureau is concerned with making government seals, printing official documents, preparing decorations of honor, and publishing the *Government Gazette*.

(2) *The Military Council* is the highest advisory organ in military affairs. It consists of a President and a Vice-President, and a certain number of Counsellors and Assistant Counsellors, whose duty during the time of peace is to inspect the troops and to direct practice in warfare, and during war to act as high

directors-general. In order to carry on the routine work the Council has a Bureau of Military Affairs and a Bureau of General Affairs.

(3) *The Department of Military Affairs* is not exactly a military department but one which is primarily charged with ceremonial duties. It functions through two bureaus: the Bureau of Ceremony and the Bureau of General Affairs. Matters regarding the celebration of the National Birth Day, the receiving and entertaining of diplomatic agents from foreign countries, the inspection of troops, and other matters of international ceremony, all fall under the jurisdiction of the Bureau of Ceremony. The Bureau of General Affairs takes charge of all memorial services, the report and despatch of military affairs and orders.

(4) Another organ of a military nature is the *Directorate General of Military Training*, which, as its name indicates, is solely for military training. It is presided over by a Director-General and two Assistant Directors-General, who are assisted by a number of counsellors and directors in the performance of their work.

(5) *The Metropolitan Garrison Headquarters* and *the Commission on Military Affairs* are no less military in character. The former (abolished in June, 1932) is charged with the duty of maintaining order and protecting the national capital and the city of Shanghai. The latter, the highest organ in military affairs, is charged with the following duties, the direction of affairs relating to national defense and the suppression of bandits, the determination of the policies of military education, the approval of military expenses and military equipment, the determination of matters of military reconstruction and the disbandment of soldiers, the approval of the appointment and removal of high military officers. A part of the work of the Commission is, however, performed by the *General Staff*, which is also under the direct control of the National Government.



(6) *The Yellow River Improvement Commission* with a Bureau of General Affairs, a Financial Bureau and an Engineering Bureau, is to survey, dredge and control the Yellow River and its branches and to deal with other related matters. In view of the fact that the Yellow River, in the valley of which the Chinese civilization originated, is nearly three thousand miles in length and runs through six provinces of China proper, the creation of a special commission is amply justified.

*The Hwai River Conservancy Commission* performs substantially similar functions.

(7) *The Academia Sinica* (formerly entitled *the National Central Academy*) is the highest cultural organization of the Republic. Its business is to direct, coordinate, and encourage all cultural researches and to promote scientific studies. Fourteen National Research Institutes have been planned, of which nine have already been established. They are of physics, chemistry, engineering, geology, astronomy, meteorology, history and philosophy, Chinese literature, archaeology, psychology, education, social sciences, zoology, and botany. *The Academia Sinica* has a President, a Secretary-General and from 3 to 5 secretaries for carrying on the administrative work. To maintain its relations with other cultural institutions, a Council has been created, composed of 30 experts, and of two kinds of honorary members—individual Chinese scientific experts who have made distinctive contributions in science, and institutions or associations which have proper equipment or have made important discoveries.

(8) *The National Reconstruction Commission*,<sup>1</sup> of which the heads of the ministries of the Executive

<sup>1</sup> The National Reconstruction Commission was formerly under the jurisdiction of the Executive Yuan. It is different from the National Capital Reconstruction Commission which is also functioning under the National Government.

Yuan as well as the chiefs of the Provincial Bureaus of Reconstruction are *ex officio* members, is headed by a chairman and a vice-chairman and is entrusted with the following duties:

1. To plan all works of national reconstruction.
2. To undertake works relating to water conservancy, electrical power development and other governmental enterprises not belonging to the various Ministries of the National Government.
3. To direct, supervise and improve private-owned electrical enterprises.
4. To undertake, with the consent of the Ministries concerned, such governmental enterprises as may come under their jurisdiction but have not been started by them.
5. To complete all works of reconstruction initiated by the Commission.

The Commission meets once a year, at the meeting of which important policies are determined upon. Actual work is done, however, by the Electrical and the Conservancy Departments.

(9) In the realm of finance the *Comptroller-General's Office (Budget Office)* is important. It is discussed in Chapter XIII.

(10) *The Commission for the Administration of the Mausolea Park* is another institution functioning under the National Government.

(11) *The National Economic Commission*, which has recently been reorganized, is also under the jurisdiction of the National Government.

## CHAPTER VII

### THE EXECUTIVE YUAN

#### THE PRESIDENT OF THE EXECUTIVE YUAN

LIKE the English prime minister, the French president of the council of ministers and the German chancellor, the President of the Executive Yuan of the Chinese Republic is a real executive, the directing head of the ministry. But instead of being chosen by the President of the National Government, the chief of state, and of necessity commanding the support of the majority of the legislature, as is the case with the prime ministers in cabinet-government countries, he is elected by the Central Executive Committee of the Kuomintang and bears no legal and immediate responsibility to the Legislative Yuan. The President is assisted by a Vice-President who is similarly chosen. They and the Ministers (appointed by the President of the National Government upon the recommendation of the President of the Executive Yuan) form a sort of cabinet, though neither the Provisional Constitution nor the Organic Law makes provision for such an organization but merely for conferences of the Executive Yuan composed of the President and Vice-President and the heads of ministries and commissions. The President of the Executive Yuan is sometimes described as a *primus inter pares*, but he exercises a general supervision over the work of his colleagues and possesses the power of dismissing them in case of disagreement.

The tenure of office of the President is dependent upon his relation to the Central Executive Committee

of the Kuomintang and the Political Council. So long as they work in harmony, he continues in office. If the Central Executive Committee and the Political Council should be adverse to the President, the best course for him would be to resign. It is true that no law requires his resignation in case of friction; but should he attempt to carry on under such circumstances, he would find himself fighting a losing battle. The reason is simple. The Central Executive Committee and its Political Council represent the supreme authority of the nation. If the President of the Executive Yuan should lose their confidence, it is quite unlikely that the administrative policies initiated by the Executive Yuan could be carried out. Not being able to carry out his policies, the President would be a figure-head rather than an actual executive, an irresponsible person rather than a real administrator.

The powers of the Executive Yuan are diplomatic, administrative, military, judicial and legislative in character and are exercised under the direction of the President. They pertain to the conduct of foreign relations and war, the execution of laws and the administration of the government, the grant of pardons and the initiation of legislative measures. Thus the Organic Law of December, 1931 stipulates: "The following matters shall be decided at the meetings of the Executive Yuan:

- "1. Bills on legislative matters to be introduced in the Legislative Yuan.
- "2. Budgets to be submitted to the Legislative Yuan.
- "3. Amnesties to be submitted to the Legislative Yuan.
- "4. Declaration of war, negotiation for peace, conclusion of treaties, and other important international matters to be submitted to the Legislative Yuan.

- "5. The appointment or dismissal of administrative officers of or above the rank of Chien Jen (third class).
- "6. All matters which cannot be settled between the various Ministries and Commissions of the Executive Yuan.
- "7. All matters which, according to law or in the opinion of the President of the Executive Yuan, should be decided at the meetings of the said Yuan."

The office of the national President and that of the President of the Executive Yuan are now held by two different persons. There are those, however, who insist that they should be held by the same person. They quote the following statement of Dr. Sun Yat-sen in *The Chinese Revolution*: "After the adoption of the constitution the people in all the districts will elect a President to organize the Executive Yuan and representatives to organize the Legislative Yuan . . . . By 'executive' we mean the President . . . . By 'legislative' we mean the Parliament (the Legislative Yuan)." The question as to whether or not the two positions should be held by the same person is important in that it determines the form of government. As the case now is, the national President is a titular head and the President of the Executive Yuan a real executive: the government is akin to the cabinet type. If the national President should concurrently be the President of the Executive Yuan, he would assume full political responsibility and the form of government would be presidential.

THE RELATION OF THE EXECUTIVE YUAN TO  
THE CENTRAL EXECUTIVE COMMITTEE,  
THE CENTRAL POLITICAL COUNCIL  
AND THE LEGISLATIVE YUAN

One of the most fundamental problems of constitutional government is the regulation of the working

relations between the executive and the legislature, the organs through which the will of the state is formulated and expressed. For, as Professor Garner says, "There is no state in which the sphere of the executive power is totally separate from and independent of that of the legislature, not even those in which the presidential system is found."<sup>1</sup> In the solution of this problem modern states have tried four systems—the cabinet, the presidential, the commission system of Switzerland and the soviet system of Russia.

The cabinet system is that system in which the real executive—the cabinet or ministry—is responsible to the legislature, while the nominal executive—the chief of state—assumes no political responsibility. The members of the cabinet are usually members of the legislature and the leaders of the majority party. They formulate, introduce, explain and urge the adoption by the legislature of all important legislative measures. They are the heads of administrative departments and hold office as long as they possess the confidence of the majority of the legislature. But as soon as the legislature manifests its displeasure with them, through a vote of censure or by a refusal to pass an important measure which they propose, they either resign in a body or they dissolve the legislature and order a new election. If the new election is favorable to them, they remain in office; if adverse, they resign, making way for a new cabinet.

The merits of the system lie in the coöperation it ensures between the executive and the legislature, the fixation of responsibility in the cabinet and responsiveness to public opinion. The system can be operated, however, only under certain conditions, chief of which are the existence of a two-party system and the possession of a high degree of political intelligence and experience on the part of the electorate.

<sup>1</sup> Garner: *Political Science and Government*, p. 723.

It now prevails with varying efficiency in England, France, Germany, Italy, and other states in central and eastern Europe.

The presidential system, in contradistinction to the cabinet system, is one in which the tenure of office of the executive is independent of the will of the legislature. It consists of an executive chief in the person of the president, king, or the emperor, who is not only the titular head but also the real executive of the state, and a cabinet which is responsible not to the legislature but to the chief executive. The tenure of the chief of state is either hereditary or fixed by the constitution, while that of the ministers (or "secretaries" in the case of the United States), who are purely administrative officers, not allowed to serve as legislators at the same time, is at the will of the responsible executive, irrespective of the rise and fall of parties in the legislature. This system, which is in operation in the United States and in most of the Latin-American countries, is characterized by an entire separation of the executive from the legislature. Though it insures the independence of the executive, it has been criticized as "autocratic," "irresponsible," and "dangerous."<sup>1</sup>

The Swiss system<sup>2</sup> comprises an executive council of seven members known as the Federal Council chosen by the legislature for the same term as its own, and a legislature of two houses not subject to dissolution by the executive. It stands midway between the cabinet and presidential types of government and possesses certain features of both. It resembles the cabinet system in that the Council is composed of the heads of administrative departments, who may occupy seats in the legislature and make motions but may not vote; that it initiates all important legislative measures, including the

<sup>1</sup> For an elaboration of these points see Garner, *op. cit.*, pp. 432-433.

<sup>2</sup> *Ibid.*, pp. 344-345.

Munro: *Governments of Europe*, pp. 738-745.

Brooks: *Government and Politics of Switzerland*, pp. 103-132.

budget, and guides their procedure in the legislature so that they may be enacted into laws; and that the members of the Council usually give way, when the legislature insists upon carrying out its own policy. On the other hand, it differs fundamentally from the cabinet type of government in that the Council, which is not necessarily composed of members from the same political party, is not constructed on the principle of party solidarity; that it is not responsible to the legislature in the sense that it is under obligation to resign when the legislature expresses its want of confidence in it; and that it does not have the power to dissolve the legislature and appeal to the electorate for a final decision in case of disagreement.

The government of Russia<sup>1</sup> is founded on a system of soviets, which consist of delegates from urban and rural districts chosen on the basis of occupations. At the apex there is the Union Congress in which rest the supreme powers of the nation. The Congress meets once a year and is empowered to deal with all questions of importance. When it is not in session, its functions are exercised by the Central Executive Committee, elected by it annually. The Committee is an executive and legislative organ combined. But because of its unwieldy size the administrative functions are entrusted to a Council of People's Commissars, which, like the cabinet in parliamentary-governed countries, consists of the heads of administrative departments, who are responsible both individually and collectively to the Central Executive Committee for their official acts and policies. Viewed as a whole the system is characterized by a fusion of powers and the system of vocational representation. Though it bears a certain resemblance to the cabinet system, it falls in a class by itself.

Compared with the four types of government that have just been described, the Chinese Government is

<sup>1</sup> Garner: *op. cit.*, pp. 345-346.

Munro: *op. cit.*, pp. 769-776.



more closely akin to the Russian system than to any other type of government. The National Congress of the Kuomintang (to be succeeded by the People's National Congress in the constitutional period) and its Central Executive Committee are similar to the Union Congress and its Central Executive Committee. Collectively, the heads of the administrative departments of the Executive Yuan are tantamount to the Council of People's Commissars except that they are not elected by the Central Executive Committee. Moreover, the Chinese Government is also constructed on the theory of party supremacy—the supremacy of the Kuomintang or Nationalist Party. Even the Central Political Council, which was supposed to be a connecting link between the Party and the Government, has now been transformed into an entirely party organ. In two respects, however, the Chinese Government deviates from the Russian system. Firstly, instead of being concentrated in one organ, the governing powers of the nation are distributed among the five Yuan.<sup>1</sup> Secondly, instead of representing the various occupations, the National Congress of the Kuomintang is organized on a territorial basis.

Since the President of the Executive Yuan is elected by the Central Executive Committee and since the heads of the administrative departments are immediately responsible to him, the relation between the Executive Yuan and the Central Executive Committee is both intimate and important. Holding the power of election, the Central Executive Committee may exert its influence upon the President of the Executive Yuan and shape the administrative policies of the nation. Vested with the authority "to carry out the resolutions of the National Congress," it may compel him to do certain things which he might not do otherwise.

The Executive Yuan is subject to the further control of the Central Political Council, which as has been

<sup>1</sup> Art. 8 of the Law of December, 1931.

noted, is an organ of the Party pure and simple. This control is defined in a resolution adopted at the Third National Congress of the Kuomintang in March, 1929, which reads: "The direction and control of the National Government (which includes the Executive Yuan) in the administration of important state affairs shall be entrusted to the Central Political Council of the Central Executive Committee of the Kuomintang."

The Executive Yuan is also related to the Legislative Yuan. Firstly, the ministers and chairmen of the administrative departments and commissions are given the privilege of attending the meetings of the Legislative Yuan for the explanation of their policies.<sup>1</sup> Secondly, they may introduce legislative measures in the Legislative Yuan.<sup>2</sup> Should there be any difference between them, it will be settled by the State Council, which serves as an arbiter.<sup>3</sup>

Questions have been raised as to why China should adopt a system of government which is yet in an experimental stage. To such inquiries the following explanations have been given: that Dr. Sun Yat-sen and the Kuomintang leaders admired the discipline and organization of the Russian Communist Party, that the absence of a two-party system and the want of political experience on the part of the electorate do not warrant the adoption of the cabinet system, that the adoption of the presidential form of government may give rise to a despotic or dictatorial government, and that the success of the Swiss system is largely due to the small size of the national territory, the absence of party strife, the long political experience of the people and the permanently neutralized status of Switzerland.

<sup>1</sup> Art. 29.

<sup>2</sup> Art. 24.

<sup>3</sup> Art. 17.

## NATIONAL ADMINISTRATION

For the performance of the daily routine the Executive Yuan has a Bureau of Political Affairs and a Secretariat. The main organs of the Yuan are, however, the various ministries and commissions, which form an integrated administrative system and are responsible for the administration of national affairs. Each ministry is headed by a minister, who is assisted by a political vice-minister and an administrative vice-minister, all appointed by the President of the National Government upon the recommendation of the President of the Executive Yuan. Next to them are the counsellors, the directors of departments and the chiefs of sections. In the case of commissions, the organization is practically the same. The chairman and vice-chairman are at the top. Immediately below are the chiefs of divisions and sections. Both the ministry and the commission have a certain number of auxiliary organs and technical committees to handle matters which require special consideration, and a host of clerks and assistants for the routine work. In all cases this internal organization is determined by law. The ministers and chairmen are not only jointly responsible to the Central Executive Committee and its Political Council, but also individually responsible to their chief, who chooses them for their departmental work. Nevertheless they are allowed a considerable range of independence, for neither the Central Executive Committee nor the President of the Executive Yuan has the time to look into the details of the work of the respective ministries.

(1) *The Ministry of the Interior*, which consists of a Public Health Administration and six Departments: General Affairs, Statistics, Civil Affairs, Land, Police Administration, Ceremonies and Customs, has a varied list of responsibilities. Its jurisdiction extends to such matters as public health, local administration, delimitation of administrative districts, municipal government, rewarding and punishing of local officials,

elections, local self-government, conscription, relief and prevention of famines and epidemics, nationality, migration, adjustment of land prices and taxes, surveying, investigation, registration and regulation of lands, settlement and migration within the country, expropriation of land, reclamation and conservancy, prevention of floods, police administration and education, census-taking, special militia, censoring of publications, copyrights, registration of social organizations, suppression of opium, preparation of statistical reports, training of statistical experts, rituals, improvement of social customs, administration and registration of temples and monasteries, registration of religious institutions, preservation and protection of historic monuments and ancient relics.

The main work of the Ministry now centers on two things: the completion of the program of local self-government in the districts<sup>1</sup> and the encouragement of more efficient agricultural production. The former aims to bring into existence a constitutional government;<sup>2</sup> the latter to improve the living conditions of the masses.

(2) *The Ministry of Foreign Affairs* is the medium of official intercourse between China and the foreign countries. Its work is divided among five Departments: General Affairs, International Affairs, Asiatic Affairs, European and American Affairs, Intelligence and Publicity. The Department of General Affairs has to do with postal and telegraphic services, the promulgation of ministerial orders, the custody of seals, the recording of transfers and changes in the component services, publications and statistical work, budget and accounting, etc. The Department of International Affairs

<sup>1</sup> See Chapter XV.

<sup>2</sup> Art. 23 of the *Fundamentals of National Reconstruction* says: "When more than one half of the provinces in the country have reached the constitutional government stage, i.e. more than one half of the provinces have local self-governments fully established in all their districts, there shall be a National Congress to decide on the adoption and promulgation of the Constitution."

deals with matters relating to commercial intercourse, duties of consuls as well as their jurisdiction, investigation and report of trade and economic conditions abroad, protection of Chinese residents abroad including students, nationality, foreigners entering and leaving Chinese territory, international agreements, international expositions, etc. The Department of Asiatic Affairs and the Department of European and American Affairs handle such diplomatic questions as may arise from the countries in Asia, Europe and America. The Department of Intelligence and Publicity, as its title indicates, is simply a press bureau.

According to the new regulations governing the diplomatic and consular services promulgated in February, 1930 the diplomatic officials include ambassadors, ministers, *chargés d'affaire*, *chargés d'affaire ad interim*, counsellors, secretaries, *attachés* and *cancellors*. The consuls or consuls-general, being concerned chiefly with the promotion of the commercial interests of Chinese citizens residing abroad, are not primarily diplomatic officials. The lower ranks of the foreign service are now filled either by competitive examinations or by promotion. This rule does not, however, apply to the highest positions, those carrying the rank of ambassador or minister.

(3) As now constituted, *the Ministry of Finance*<sup>1</sup> is composed of a Customs Administration, a Salt Administration, a Department of General Affairs, a Department of Taxation, a Department of Currency, a Department of Public Loans, a Department of Treasury, a Department of Accounting and a Tax Administration which includes the former Consolidated Tax Administration and the Stamp Tax, Tobacco and Wine Division. Its work is mainly concerned with the collection of revenue; the custody of public funds and the paying of all governmental bills; the supervision of currency

<sup>1</sup> For the work and organization of the Ministry of Finance see Chapter XIII, pp. 253-254.

including the regulation of coinage, the issue of paper money, the supervision of speculative, insurance, and savings business; and the issue of bonds. Since the creation of the Finance Commission for making public the financial transactions of the country, of the Economic Commission for the planning of national economic reconstruction, and of the Budget Office for the compilation of the budget, the work of the Ministry has been reduced to no small extent. But this gives the Ministry adequate time to engage itself in such reforms as may be needed in the realm of public finance.

(4) *The Ministry of Military Affairs* is what its name implies. Its functions, being primarily the maintenance and administration of the army, are performed by five administrations: General Affairs, Army, Aviation,<sup>1</sup> Quartermasters, and Munitions.

For many years the Republic of China maintained a huge army which had neither standard organization nor efficient training and was under no central control. Even at the conclusion of the northern expedition the Chinese army was composed of as many as two million men. A Disbandment Conference was, therefore, assembled in 1929, the result of which was the creation of the Disbandment Commission. Among the important policies that the Commission endeavors to carry out the following may be mentioned: that the numerical strength of the Chinese army shall be limited to 800,000, that the military expenditure shall not exceed forty per cent of the national budget, and that in addition to military training, political training for the soldiers shall be emphasized.<sup>2</sup>

A war atmosphere has pervaded the whole country since Japan's invasion of Manchuria in September, 1931 and the outbreak of the Shanghai incident in January, 1932. In the carrying out of the plans that

<sup>1</sup> The Aviation Administration is now functioning under the Commission on Military Affairs.

<sup>2</sup> Tyau: *Two Years of Nationalist China*, pp. 132, 133, 137.

have already been decided upon (that of limiting the military expenditure and that of reducing the size of the army) the Commission finds a new handicap.

(5) The work of the *Ministry of Navy* is distributed among the following Departments: General Affairs, Personnel, Naval Operations, Naval Construction, Naval Training, Ordnance, Marine Affairs and the Commissariat Division. It includes the checking of personal records, maritime etiquette, naval uniforms and flag, maritime capture, naval construction, rules of naval warfare, naval hospitals, naval bases, transportation and navigation, shipyards, naval academies, maritime surveyings, etc.

After China's defeat in the war with Japan in 1894-5 the building of a navy strong enough to defend her long coast seemed to be absolutely necessary. The National Government is not unaware of this urgent need, and a program<sup>1</sup> has been worked out. The plan contemplated involves the construction of 105,000 tons of cruisers, destroyers, submarines and aircraft-carriers, of 6,800 tons of gunboats, of 20,000 tons of submarines and submarine depot ships, of 10,200 tons of mine-sweepers and torpedo-boats, of 23,500 tons of transport and hospital ships, and of sixty naval aeroplanes. An educational program for the training of 2,000 students in the different lines of naval service has also been planned. It is expected that this program will be completed within six years, that is, in 1935, the year in which the constitutional period commences.

(6) The *Ministry of Industry* is an amalgamation of the Ministry of Agriculture and Mining and the Ministry of Industry, Commerce and Labor, which was made in the early part of 1931. The composite character of its functions can therefore be imagined. The Ministry has now eight establishments: Forestry Administration, Department of General Affairs, Department of Agriculture, Department of Industry, Department of

<sup>1</sup> Tyau: op. cit., pp. 144-145.

Commerce, Department of Fishery and Pasturage, Department of Mining and Department of Labor, which deal with a great many things including experimentation, improvement and protection of agricultural seeds; sericulture; insect and animal pests and the methods for their control; examination and improvement of agricultural implements; irrigation; rural education; agricultural and labor banks and coöperative societies; land taxes; planning and regulation of government as well as private chemical, mechanical and metallurgical enterprises; examination of manufactured and commercial commodities; registration and supervision of industrial, agricultural, commercial and labor organizations; registration of technical experts and accountants; encouragement of native industries; weights and measures; commercial exhibitions; trade marks; commercial treaties and tariff systems; registration of production and consumption; international trade; standardization of prices; supervision of commercial attaches abroad; cattle-breeding; fishing; regulation of government mines; encouragement and protection of mining enterprises; mining taxes; mining police and disputes; geological survey; improvement of workers' living conditions; workers' education; unemployment; labor disputes; social insurance; protection of emigrants and overseas laborers; plans for national afforestation; supervision of afforestation areas; experimentation with tree seeds and seedlings; etc.

An elaborate program<sup>1</sup> has been formulated by the Ministry, which embraces the compilation of agricultural, forestry, mining, industrial, commercial and labor statistics, the promotion of international trade, the colonization of the frontier provinces by superfluous soldiers, the encouragement of more efficient agricultural production, the establishment of research stations of various kinds and the promotion of native

<sup>1</sup>Tyau: *op. cit.*, pp. 177-184, 191-208.



industries. To accomplish this program the Government is considering the question of utilizing foreign capital.

(7) To the *Ministry of Education*, as indicated by its title, is committed the care of all matters pertaining to education. Its work is apportioned among five departments and a bureau of compilation and examination of textbooks.<sup>1</sup> The five departments take charge of general affairs, higher education, elementary and secondary education, social education, and Mongolian and Tibetan education respectively. .

The educational system in China is now represented by colleges and universities—national, provincial and private, middle schools—senior and junior, primary schools and kindergartens. In the field of higher education, emphasis is being laid on science and engineering rather than liberal arts. Senior middle schools are of three types—vocational, college-preparatory and normal. The junior middle schools are intended to serve as foundations for more advanced studies. To educate the masses supplementary classes and schools, popular lectures, educational motion pictures, plays, concerts and exhibitions are provided for. The education of the Mongolians and Tibetans is also receiving due attention. Special classes for Mongolian and Tibetan students are established at the Peking National University and the National Central University at Nanking. The existing Mongolian and Tibetan schools in northern China are to be reorganized so as to make them more practical.

At the First National Educational Conference held in May, 1928 three educational policies were adopted:<sup>2</sup>

“(a) To promote Nationalism, education shall seek to instil into the minds of youth a national spirit, to keep alive the old cultural traditions, to raise the

<sup>1</sup>The Committee on College Education and the Committee on Overseas Chinese Education are important organizations within the Ministry.

<sup>2</sup>Tyau: op. cit., pp. 224-225.

general level of moral integrity and physical vigor, to spread modern scientific knowledge, and to cultivate aesthetic taste;

“(b) To attain Democracy, education shall seek to inculcate such civic virtues as law-abidingness and loyalty, to teach organizing ability and a spirit of service and coöperation, to disseminate political knowledge, and to inform the people of the true meaning of liberty and equality; and

“(c) To realize Social Justice, education shall seek to develop the habits of manual labor and productive skill, to teach the application of science to everyday life, and to enlighten the people on the interdependence and harmony of economic interests of various classes.”

The adoption of many specific resolutions<sup>1</sup> at the Second Conference held in April, 1930 is a clear manifestation of the nation's conviction that the way to democracy is through education.

(8) *The Ministry of Communications* takes charge of all means of communications except railways and highways. Matters relating to the operation and improvement of the telegraph and telephone systems, the transportation of mails, postal savings banks, parcels post system, postal money orders, harbor construction, ship-building, navigation, air mail service and radio communications are all under its jurisdiction. The work devolves on three Departments: Telegraph Administration, Postal Administration and Navigation Administration. In view of its ever-increasing work the Ministry maintains a large staff—12,000 men being engaged in the telegraph services and 20,000 men in the postal services. The telegraph and telephone lines now in active service aggregate 250,000 li and 795,221 li respectively.<sup>2</sup>

Since 1929 the Ministry also takes control of radio communications. It is now in possession of seven

<sup>1</sup> Tyau: op. cit., pp. 226–227.

<sup>2</sup> A li is about one third of a mile.

long wave stations and fifty-two short wave stations. To insure safety radio installations are required of all Chinese ships sailing along the coast as well as in inland waters. To determine their competency all seamen are required to undergo a rigid examination. In the telephone service the old battery system is being replaced by the automatic system. By the establishment of several lines of air mail and passenger service some of the barriers to quick communication have been removed. In postal administration the foreign Co-Director-General, who was formerly looked upon as the real head, is now made an assistant of the Chinese Director-General. But much remains to be done. The future program of the Ministry includes ship-building, harbor repairing and construction, maritime insurance, mitigation of all sorts of disasters on the high seas, and the establishment of banks for shipping business.

(9) In such a large country as China the construction of railways for purposes of communication and transportation, the transmission of news and the spreading of intelligence, the distribution of food provisions and the development of native industries is an absolute necessity. Hence the creation of a separate *Ministry (of Railways)* to plan, construct and manage national railways and highways and to supervise all provincial as well as private railways is justifiable. In addition to three technical departments: traffic and operation, finance, and engineering, the Ministry has a number of committees and bureaus dealing with such questions as through traffic, statistics, railway health, railway rules and regulations, standardization of railway technique, railway planning, national highway-planning, unification of railway accounts and statistics, readjustment of railway obligations, railway education, etc.

For the sake of economy the Ministry has created a purchasing commission charged with the purchase of

locomotives, cars, steel rails, sleepers, bridges, machinery, steam or motor boats, electrical materials, etc. A budgetary system has also been adopted and is now in operation. To carry out the program of railway construction the Ministry, which has already secured the approval of the National Government, will utilize the Boxer indemnities refunded by the various Powers. Railway bonds will be issued in case of deficit. It is expected that the Canton-Hankow and Lunghai Railways will be completed by 1932 and 1934 respectively. The building of 67,553 li of highways at a cost of \$364,068,000 is being planned. Educational institutions, such as Chiao Tung University at Shanghai, Civil Engineering College at Tangshan and College of Railway Administration in Peiping, are operated under the direction and control of the Ministry. They serve as a sort of reservoir for talents in railway construction and administration.

(10) *The Ministry of Justice*, formerly under the jurisdiction of the Judicial Yuan is now one of the administrative agencies of the Executive Yuan. Its work is handled by four Departments. The Department of General Affairs deals with matters relating to the receiving, despatching, and preserving of documents, the promulgation of ministerial orders, the custody of seals, the appointment, dismissal, and disciplinary punishment of judicial officials, statistics and publications, the establishment and abolition of courts as well as the fixing of their jurisdiction, lawyers and their qualifications. The Department of Civil Affairs is concerned with the trial of civil cases, non-contentious matters, the notaries public and judicial registration. The Department of Criminal Affairs has to do with the trial of criminal cases, the prosecution of crimes, amnesty, reduction of sentence, restitution of civic rights, execution of sentence, suspended sentence and international extradition. The Department of Prison Administration exercises functions

concerning the establishment, abolition and supervision of prisons, supervision over prison authorities, reformatory measures, provisional release, protection of released prisoners, prison hygiene and labor.

With a view to the eventual abolition of extraterritoriality or consular jurisdiction in China the National Government is undertaking a program of prison reform, which involves the construction of more modern prisons, reformatories, detention houses and lunatic asylums, and the providing of work and education for the prisoners.

(11) To bring China and the outlying territories, Mongolia and Tibet, more closely together, a *Commission on Mongolian and Tibetan Affairs* was created. It is composed of a Chairman and a Vice-Chairman and from 9 to 15 commissioners, among whom are the Panchen Lama and seven Mongol and Tibetan dignitaries. The administrative routine of the Commission is performed by three Departments: General Affairs, Mongolian Affairs and Tibetan Affairs. In order to accelerate reforms in Mongolia a Mongolian Conference was held in June, 1930, at which important resolutions were adopted and policies formulated for the economic, industrial, educational and political development of Mongolia.<sup>1</sup>

(12) To exterminate the opium evil an *Opium Suppression Commission* has been brought into existence. According to its organization law the Ministers of the Interior, Foreign Affairs, Military Affairs, Finance, Communications, Railways, and Justice are *ex officio* members of the Commission. In general the functions of the Commission are fourfold: (1) to direct the local officials in the task of opium suppression; (2) to petition the National Government to change or cancel orders or decisions made by the provincial and municipal governments, which are either improper or contrary to law; (3) to bring officials, civil and military,

<sup>1</sup> For the Mongolian Conference see Chapter XV, pp. 317-318.

to disciplinary punishment in case they should neglect their duties of opium suppression or in any way hinder the execution of laws appertaining thereto; (4) to urge the local authorities or to petition the National Government to examine those government employees who are suspected of smoking opium. These functions are distributed between the Department of General Affairs and the Department of Inspection and Medicinal Analysis.

(13) In view of the frequent occurrence of drought, famine and floods the *Famine Relief Commission* is an indispensable organization.

(14) *The National Reconstruction Commission* is now functioning under the National Government.<sup>1</sup>

(15) *The National Labor Commission* has not yet come into existence.

(16) *The Commission on Overseas Chinese Affairs*, charged with the duty of investigating the condition of Chinese residing abroad, supervising all overseas Chinese organizations, encouraging overseas Chinese to invest their capital in national industries and directing all cultural enterprises, has been transferred to the Central Party Headquarters.

As a rule the commissions are less permanent in character than the ministries.<sup>2</sup> The main reason of their existence is that their work is not important enough to justify the creation of a separate ministry and yet cannot very well be assigned to subordinate officials in a ministry.

### CONFERENCE OF THE EXECUTIVE YUAN

Individually the ministers and chairmen are no more than the heads of the administrative agencies of

<sup>1</sup> See Chapter VI, p. 153.

<sup>2</sup> The Executive Yuan has several Commissions which are temporary in character. The National Economic Commission and the National Finance Commission are examples. They perform advisory functions. But the Economic Commission has recently been brought under the direct jurisdiction of the National Government.

the Executive Yuan. Collectively however, they constitute a cabinet, a cabinet which, of course, has no legal basis, because neither the Provisional Constitution nor the Law Governing the Organization of the National Government mentions anything about it but a conference of the Executive Yuan composed of the President and Vice-President and the Heads of ministries and commissions. In this respect the group of administrative officers of the Executive Yuan is comparable to the English or American cabinet.

Bound by the regulations governing the conference of the Executive Yuan, the meetings of the Executive Yuan are conducted with a great deal of formality. The President of the Yuan is designated as the presiding officer. When he is absent the Vice-President is to act in his place. In case a minister or a chairman cannot be present at the meeting, a political vice-minister or a vice-chairman may take his place on condition that a written notice is given previously. The chief secretary and the director of the bureau of political affairs of the Executive Yuan may attend the meetings and express their opinions, but they may not vote.

The meetings of the Yuan are not fixed as to time. In normal times the Executive Yuan meets only once or twice a week.

The agenda of the meeting comprises chiefly reports, discussions and deliberations, and investigations, which are taken up in the order mentioned.

All motions must be in written form and must be handed to the Yuan before the meeting is opened. Motions from the floor are entertained only when they are of the utmost urgency. If a motion is complicated in character, a committee may be appointed to make investigations. Decisions are made by a majority of those present. Votes are taken either by a show of hands or by rising. In case of a tie, the presiding officer is entitled to cast a deciding vote.

Reconsiderations may be requested, which will be made if seconded by one third of those present.

The minutes record the date and place of each meeting, the names of those present, discussions, deliberations and motions.

### CONCLUSION

Several points need to be emphasized before closing this chapter. One concerns the distinction between the State Council and the conference of the Executive Yuan. The former, which is composed of from 24 to 36 members, is a plural executive; the Presidents and Vice-Presidents of the five Yuan and the administrative heads of the Executive Yuan are not permitted to serve concurrently as State Councillors. To speak of it as a cabinet would therefore be a mistake. On the other hand, the group of administrative heads of the Executive Yuan is a cabinet in everything but name.

Secondly, like the cabinet in other countries the Executive Yuan plays an important role in legislation in that it is vested with the actual responsibility of initiating and recommending to the consideration of the Legislative Yuan such measures, in forms of bills, as it deems necessary.

Thirdly, the ministries and commissions of the Executive Yuan, like the executive agencies of the countries in continental Europe, constitute an integrated system of administration in contradistinction to the irregular or disintegrated system prevailing in the states of the American Union.



## CHAPTER VIII

### THE LEGISLATIVE YUAN

#### THE LEGISLATIVE YUAN UNDER THE "FIVE-POWER" SYSTEM

IN comparison with the legislatures of modern states, which are the organs of public opinion and the instrumentalities through which the will of the electorate is authoritatively expressed and formulated,<sup>1</sup> the Legislative Yuan in China is hardly such; for instead of being representative in character, it is an entirely appointive chamber. Even in point of powers, it is not to be compared with the legislatures in other countries. This is so for a number of reasons. Firstly, the theory of the supremacy of the Central Political Council in matters of government during the period of political tutelage has impaired the independence and lowered the prestige of the Legislative Yuan. Secondly, the Council's power of determining the principles of legislation has limited quite noticeably the scope of the legislative power. Thirdly, the creation of the Control Yuan has taken away from the Legislative Yuan the impeaching power. Fourthly, the adoption of the unicameral system has deprived the Legislative Yuan of the judicial function of sitting as a high court of justice in the trial of cases of impeachment usually exercised by upper chambers of bicameral legislatures.

<sup>1</sup> For the supremacy of the legislative power see Willoughby, *The Government of Modern States*, pp. 289-290.

Garner: *Political Science and Government*, pp. 593-594.

Nevertheless, the role played by the Legislative Yuan is by no means unimportant. In the first place, the brevity of the Provisional Constitution in the organization of the government has necessitated the Legislative Yuan's working out all the details regarding the structure of the government, the distribution of powers between the nation and the provinces, etc. Secondly, through the exercise of the power of taxation, of approving the national budget and of creating new offices or services, it has made its influence strongly felt.

#### WHY THE ADOPTION OF A UNICAMERAL LEGISLATURE

Structurally modern legislatures are of two types—the unicameral or single chamber system and the bicameral or double chamber system. Of the former type are the legislatures of Bulgaria, Finland, Greece, Esthonia, Latvia, Lithuania, Panama, the Dominican Republic, Yugoslavia, etc.<sup>1</sup> Of the latter are those of England, the United States, Germany, France, Italy, etc. Although the unicameral principle is gaining increasing favor, the majority of the legislatures are constituted of two chambers. This, as Professor Willoughby remarks, is due to “the historical circumstances under which legislative bodies have come into existence,” and “the supposed technical advantages of the bicameral over the unicameral system.”<sup>2</sup> Regarding the first point, Professor Willoughby takes the English Parliament and the American Congress as illustrations: the former, “the mother of all parliaments,” being the result of an accidental merging of the Lords Spiritual, the Lords Temporal, and the Gentry or Commoners into the House of Lords and the House of

<sup>1</sup> Garner: *op. cit.*, pp. 608–609.

<sup>2</sup> Willoughby: *op. cit.*, p. 314.

Commons; the latter, consisting of a Senate and a House of Representatives to represent the component states and the population in general respectively, being the result of deliberative action. As to the second point, he maintains that "the bicameral system compels delay and deliberation," that "it makes it impossible for a legislature to be swept from its feet by a sudden wave of unreasoning popular opinion," that "it ensures that opportunity will always be given for a sober second thought," that "it ensures that measures before their adoption will undergo a careful revision," and that finally "it makes possible a better representation of different interests in the government."<sup>1</sup> On the other hand, complicatedness, expensiveness, division of responsibility and delay in action are, according to him, the disadvantages.<sup>2</sup>

Prior to the inauguration of the present Legislative Yuan, the Chinese legislature, with the exception of the National Council which was a provisional legislature, had been of the bicameral system throughout the whole Republican period. The adoption of a unicameral legislature is, in fact, a departure from the Chinese tradition. For such a radical change a number of reasons may be given. Firstly, the change is due to foreign influences.<sup>3</sup> Since the World War new states in central and eastern Europe have almost invariably adopted the unicameral system. Movements for unicameral legislatures in some of the states of the American Union have also taken place at different times. Furthermore, the upper chamber of Queensland, Australia, as well as those of the local legislatures in the South African Union have been abolished. Such movements and changes cannot pass unnoticed. A second reason for the adoption of a unicameral legislature is to be found

<sup>1</sup> Willoughby: *op. cit.*, p. 318.

<sup>2</sup> *Ibid.* Compare Garner, *op. cit.*, pp. 605-608.

<sup>3</sup> For the movements for unicameral legislatures see Garner, *op. cit.*, pp. 608-609.

in the fact that the Central Political Council is authorized to determine the principles of legislation. The despotism of a single chamber is not at all to be feared. Thirdly, China is not a federation, and a second chamber to represent the interests of the component provinces is not needed. Fourthly, since the Legislative Yuan is not a popular chamber in the sense that its members are all elective, there is no necessity for a second chamber to represent the special interests of the country. Fifthly, the change from the bicameral to the unicameral system is made for the sake of economy.

Strong these reasons may be. But just at present, a bicameral legislature would be more suitable, since, as a matter of fact, China has accumulated little legislative experience during the Republican period.

### THE ORGANIZATION OF THE LEGISLATIVE YUAN

As it was first organized, the Legislative Yuan consisted of from 49 to 99 members, all appointed by the President of the National Government at the instance of the President of the said Yuan. (The President and Vice-President of the Yuan are elected by the Central Executive Committee of the Kuomintang.) As a result of the popular agitation for a representative chamber, the Law of December, 1931 fixed the quota of legislators at from 50 to 100 and stipulated that half of them should be elected by people's organizations. To-day the legislators are appointed, but the quasi-elective plan, if carried out, will bring the Legislative Yuan a step nearer to a representative institution.<sup>1</sup>

<sup>1</sup> In June, 1932 there was much talk in the government circle to keep the Legislative Yuan an entirely appointive chamber. At the Third Plenary Session of the Central Executive and Supervisory Committees of the Kuomintang held in December, 1932 the quasi-elective plan was discarded and the number of legislators was fixed at from 49 to 99.

In addition to a number of standing committees the Legislative Yuan has a Secretariat, a Bureau of Statistics and a Bureau of Compilation. The Secretariat is charged with the following duties: the receiving and despatching of correspondence; the drafting of documents; recording the minutes of the Yuan; appointment and removal of officials of the Yuan; custody of the seal; accounting and other miscellaneous matters.

The Bureau of Statistics has to do with the investigation and compilation of all statistics concerning legal, political, economic and social matters, and the compilation and publication of a statistical year book, as well as other statistical reports and bulletins.

The Bureau of Compilation is concerned with the translation of foreign codes, the compilation and publication of all national codes, and the selection of reference materials for legislation.

Technical experts may be employed whenever the Legislative Yuan so desires. The method of their selection, as well as their remuneration are to be determined by the Yuan.

#### FUNCTIONS OF THE LEGISLATIVE YUAN

According to the Law Governing the Organization of the National Government, the Legislative Yuan is not merely "the highest legislative organ" but also that branch of the government which is vested with "the power to decide upon the following: legislation, budgets, amnesties, declaration of war, negotiation for peace, conclusion of treaties, and other important international affairs." In other words, the functions of the legislature are executive and judicial as well as legislative.

The exercise by the legislature of non-legislative functions is not uncommon in western countries.<sup>1</sup> In the United States, the Constitution vests in the Senate

<sup>1</sup> Garner: *op. cit.*, pp. 594-595.

the power to approve treaties, to confirm appointments, to try cases of impeachment and to elect the Vice-President when the Electoral College fails to do so. As a matter of fact, the Congress of the United States, according to Professor Willoughby, performs at least seven functions: (1) as a constituent assembly or constitutional convention, (2) as a canvassing board and electoral college, (3) as an organ of public opinion, (4) as a board of directors for the government corporation, (5) as an organ of legislation, (6) as an executive council, (7) as a high court of justice.<sup>1</sup> While the legislatures of modern states do not exercise exactly the same functions, their activities are extensive in scope. This dominant position of the legislature is nothing strange. As an institution representative of the people who are the sovereign of the body politic, the legislature should be given the power to decide upon the character of policies that shall be pursued and of laws that shall be enacted; or else it would be a mere bureau of legislation and lose its representative character.

## THE LEGISLATIVE YUAN AT WORK

### (a) *The Opening of a Formal Meeting*

When the Legislative Yuan is in session, its President, by virtue of his office, performs the function of a presiding officer. Should he be absent, the Vice-President of the Yuan would act in his place.

The opening of the meeting of the Legislative Yuan is simple.<sup>\*</sup> The first thing to be done is the paying of respect (in making three bows) to the national flag, the flag of the Kuomintang or Nationalist Party and the portrait of Dr. Sun Yat-sen, the late leader of the

<sup>1</sup> For the details concerning the seven functions see Willoughby, *op. cit.*, pp. 291-313.

Party. Then the political will of Dr. Sun<sup>1</sup> is read by the President and repeated by the members. Immediately after that, the whole house devotes itself to a three-minute meditation. The whole ceremony, which is observed in all kinds of formal meetings throughout the country and which takes about six minutes, may seem strange to a casual observer; but should he go to Westminster, the antiquated procedure there might surprise him even more.

Every member has a definite seat, which is assigned by lot. One third of the entire membership constitutes a quorum. At each meeting the clerk calls the roll to ascertain the presence of a quorum. If there should be less than one third of the members present, the President may set a time, at the expiration of which another count will be made by the clerk. If the second count shows no quorum, the meeting is declared adjourned.

### (b) *Classification of Bills*

In the Legislative Yuan bills may be classified into four categories: bills from the Central Political Council, bills initiated by the Executive, Judicial, Control, and Examination Yuan, budget bills, and bills proposed by the members of the Legislative Yuan. Such a classification is roughly similar to the distinction between public and private bills maintained in the English House of Commons. But while all the bills

<sup>1</sup> "For forty years I have devoted myself to the cause of National Revolution, the aim of which is to secure for China a position of independence and equality among nations. The accumulated experience of these forty years has fully convinced me that to attain this goal it is necessary to awaken the mass of our own people and associate ourselves with those peoples of the world who treat us on a footing of equality in the common struggle.

"The Revolution is not yet achieved. Let all my comrades follow my writings, 'Plans for National Reconstruction,' 'Fundamentals of National Reconstruction,' 'Three Principles of the People,' and the Manifesto issued by the First National Congress of the Party, and work unceasingly for their consummation. Above all, the convocation of a People's Convention and the abolition of unequal treaties, which I have recently advocated, should be accomplished with the least possible delay. This is my will and behest."

Sun Wen. Signed, 11th March, 1925.

in the Chinese Legislative Yuan undergo the same procedure, public and private bills are dealt with differently at Westminster. According to the regulations governing the legislative procedure, bills from the Central Political Council should have the first consideration, those from the various Yuan (the Legislative Yuan not included) come next, those proposed by the members come last.<sup>1</sup> The budget bill, which is initiated by the Budget Office and is introduced in the Legislative Yuan by the Executive Yuan on April 1st, must be presented to the National Government before May 31st for promulgation.<sup>2</sup>

All bills must be presented in written form, to be accompanied by reasons and explanations.

Bills from the floor may be presented only under three conditions:<sup>3</sup>

1. After the house finishes its report business, but before it proceeds to discuss any bill.
2. After action is taken on one bill, but no discussion has yet begun on another bill.
3. After the completion of the program of the day, just before the adjournment of the meeting.

### (c) *The Process of Law-Making*

The legislative procedure in China is not essentially different from that in other countries. All bills are given three readings, referred to committees, reported, debated, amended, passed, and sent to the National Government for promulgation. According to the law governing the organization of the National Government the various Yuan may introduce measures in the Legislative Yuan. Since each Yuan has its own conference or meeting, the bills that it presents must have

<sup>1</sup> This order is subject to the alteration of the President of the Legislative Yuan.

<sup>2</sup> See the budget rules and law in Chapter XIII, pp. 245-249.

<sup>3</sup> Such bills must be seconded by four members.



already undergone careful consideration before they reach the legislature. After its introduction each bill will be given its first reading, which is a reading of the title only. If there are questions, explanations must be given by the mover. Then without debate, the bill is referred to a standing committee which is required to make a report either favorable or unfavorable. (This committee stage may be omitted under extraordinary circumstances. In case of a budget bill, the committee to which it is referred must complete its investigation within two weeks.) It is for the house to decide whether or not the bill reported by the committee should have a second reading. If the house votes negatively, the bill proceeds no further. But a negative vote does not affect a bill which comes from the Central Political Council. If a bill is entitled to a second reading, a meeting will be arranged for that purpose.

During the second reading the clauses of the bill are read one after another. Questions may be raised and changes introduced. It is during this stage that the members engage in hot debate. The amendments offered by the standing committee, which makes the report, will be the subject of discussion. After the house has agreed to general principles, the phraseology and arrangement of sections of the bill will be referred to the standing committee for improvement.

The third reading is a review of the whole measure. Unless the measure is in conflict with existing laws or embodies some conflicting clauses, no amendment may be made at this stage. A rising vote or an open ballot will then be taken, which marks the end of the legislative procedure. In due time, the bill will be presented to the President of the National Government for promulgation.

Three points need to be made clear concerning the process of legislation. One is that the Legislative Yuan can only study the contents of the measures

from the Central Political Council (art.13 of the regulations governing the legislative procedure). This means that the Legislative Yuan cannot alter the substance of a bill initiated by the Central Political Council. According to one of the six fundamental principles guiding the procedure of legislation adopted by the Central Executive Committee of the Kuomintang in August, 1932 a bill, passed by the Legislative Yuan, is subject to the amendment of the Central Political Council provided it has not been promulgated by the National Government. Secondly, a defeated measure of the Legislative Yuan, after being passed by the Central Political Council as a result of the recommendation of the President of the Legislative Yuan, may not be rejected a second time when it is referred to the Legislative Yuan for reconsideration (arts. 65 and 66). Thirdly, the three-reading procedure may be simplified, if the President of the Legislative Yuan so decide, or if one third of the members so request.

#### (d) *Rules of Debate and Sessions*

In order to participate in discussions one must first secure the recognition of the President of the Yuan. This he does by reporting his name and seat number. If he is recognized, he launches into his speech. The time for discussion is generally unlimited, but the President has the authority to put a question to vote and to fix a time limit for the consideration of a bill. In view of the small size of the Legislative Yuan such rules known as "closure by compartment" and "kangaroo closure," which are being enforced in the English House of Commons, do not seem to be necessary.

There is no provision for long and short sessions, as is the case with most of the legislative chambers. The regulation governing the legislative procedure only stipulates that the Legislative Yuan must meet at least once a week. In actual practice, the frequency

of meetings varies with the work with which the Legislative Yuan is confronted. At the meeting of the Fourth Anniversary of the Legislative Yuan, Mr. Shao Yuan-chung, Acting President of the Yuan, reported that in four years 214 sittings had been held.

(e) *The Committee System*

At present the Legislative Yuan has five standing committees: Codification Committee, Economic Committee, Finance Committee, Committee of Foreign Affairs, and Committee of Military Affairs. (A Constitution-drafting Committee has recently been created. But it is a select, not a standing committee.) Their size is not fixed but is determined by the President of the Yuan in consideration of the program that the Legislative Yuan has to carry out. Each committee has a chairman, who is designated by the President of the Yuan. The time allotted to it for the consideration and investigation of a bill is determined either by the President or by the Legislative Yuan in plenary session. Committee meetings are assembled by the chairman. The results of a meeting must first be reported in writing to the President of the Yuan, who may require the chairman to make the report before the Legislative Yuan while it is in plenary session.

THE RELATION OF THE LEGISLATIVE YUAN  
TO OTHER ORGANIZATIONS

In two respects the Legislative Yuan maintains its relations with other organizations. First, the ministers and chairmen of the Executive Yuan are permitted to attend the meetings of the Legislative Yuan and participate in discussions but they may not vote. Second, the various yuan and the ministries and commissions of the Executive Yuan are subject to the interpellation of the legislators concerning the execution of the measures adopted by the Legislative Yuan

and the conduct of the members of the Control Yuan.<sup>1</sup> But interpellations in China are not followed by votes as in France. They bring no serious consequences. From a practical point of view these two relations are wholesome. Through the presence of the ministers and chairmen at the meetings of the Legislative Yuan a sense of unity and coöperation between the executive and legislative departments may be created, which will help to facilitate their work. The system of interpellation provides a check on governmental agents fitted to discourage yielding to the temptations that beset them.

#### THE CASE OF THE SHANGHAI ARMISTICE AGREEMENT AND OF THE POSTAL TARIFF, MAY 1932

For three and half years since its existence the Legislative Yuan has devoted itself to the work of legislation and has seldom asserted the powers conferred upon it by the Provisional Constitution and the Law governing the organization of the National Government. But in May, 1932 it surprised the general public by requesting the Executive Yuan to offer an explanation for its action of increasing the postal rates<sup>2</sup> and by expressing its dissatisfaction over the failure of Wang Ching-wei, President of the Executive Yuan, to submit to it the Shanghai Armistice Agreement for approval.<sup>3</sup> Owing partly to the attitude taken by the Legislative Yuan and partly to the opposition from the people, a reduction in the increased postal rates was finally made by the Executive Yuan. The case of the Shanghai Agreement was initiated by the Control Yuan, which

<sup>1</sup> See the Law governing the organization of the Legislative Yuan and the Law governing the organization of the Control Yuan.

<sup>2</sup> The Legislative Yuan argued that there was no necessity for an increase in the postal rates since the budget had already been framed.

<sup>3</sup> The Shanghai Armistice Agreement terminated the hostilities in and around Shanghai between China and Japan, which broke out in Jan. 1932.

instituted an impeachment against Wang Ching-wei for alleged violation of the Law governing the organization of the National Government, since he did not present the Agreement in the form of a bill to the Legislative Yuan for final action. The Legislative Yuan supported the action of the Control Yuan, because, according to law, it has the power to negotiate peace and to determine upon other important international affairs. The Central Supervisory Committee, to which the case was referred, however, quashed the impeachment.

From the standpoint of law such an important affair as the Armistice Agreement, even if it is not to be viewed as a treaty, should have been submitted to the legislature for sanction before it was signed. As a matter of fact, the Agreement had already been approved by the Central Political Council before being signed, and the Legislative Yuan had also been informed of such an Agreement.<sup>1</sup> As no bill passed by the Central Political Council can be voted down by the Legislative Yuan, the approval of the Armistice Agreement by the Legislative Yuan is simply a question of the proper routine.

Regardless of the technical points involved in the two cases mentioned, what is significant is that the assertion of power by the Legislative Yuan will undoubtedly make it a full-fledged legislature rather than a mere bureau of legislation.

<sup>1</sup> For the treaty-making procedure in China see the article, "The Treaty-Making Power of China," by Tsooming Chiu in *The Chinese Social and Political Science Review*, Vol. XVI, No. 3, Oct. 1932, pp. 514-518.

## CHAPTER IX

### THE JUDICIAL YUAN

#### THE ORGANIZATION AND FUNCTION OF THE JUDICIAL YUAN

AS it is now constituted, the Judicial Yuan consists of a Supreme Court, an Administrative Court and a Commission for the Disciplinary Punishment of Officials. The President of the Yuan may be the President of the Supreme Court and the Vice-President of the Yuan may be the chairman of the Commission for the Disciplinary Punishment of Officials.<sup>1</sup> In addition there is a Secretariat and a Counsellor's Office for the routine administration. The Judicial Yuan is the highest organ in judicial trials and is charged with functions relating to the grant of pardons and the restitution of civic rights. According to the organization law of the Judicial Yuan the President of the Yuan possesses the power of unifying the interpretation of laws and ordinances and of changing preceding decisions. But this power can be exercised only when he and the presiding judges of the various divisions of the Supreme Court so decide in plenary session.

<sup>1</sup>The Ministry of Justice, formerly under the jurisdiction of the Judicial Yuan, has now been shifted to the Executive Yuan. At the Third Plenary Session of the Central Executive and Supervisory Committees of the Kuomintang (Dec. 1932) the question was raised as to whether or not it should function under the Executive Yuan. Very likely it will be brought over to the Judicial Yuan.

## THE SUPREME COURT

The Supreme Court is headed by a President, who directs and supervises the administration of the affairs of the Court but has no power to direct the trial of cases. It is composed of a registrar's office, a procuratorate and a certain number of divisions or chambers dealing with civil and criminal cases respectively. In May, 1932 the Central Political Council decided to create in the Supreme Court a special chamber to handle cases concerning corrupt officials with the delegates of the Executive and Control Yuan as its members and the President of the Supreme Court as its presiding judge. The number of divisions varies with the amount of work that comes before the Court and is determined by the order of the Judicial Yuan. Each chamber has five judges, one of whom serves as presiding judge. (The President of the Supreme Court may be the presiding judge of a civil or criminal chamber.) At the top of the procuratorate is the chief procurator. Below are from seven to nine procurators. Like the attorneys in the United States they conduct all legal proceedings against those individuals or associations which have violated national laws. The registrar's office has to do with correspondence, clerical routine, compilation of cases, statistics and accounting, etc.

The President of the Judicial Yuan and of the Supreme Court receive their appointment directly from the National Government. The judges of the divisions and the procurators are appointed by the National Government upon the recommendation of the Minister of Justice and the President of the Judicial Yuan.

The sessions of the Supreme Court are decided by the National Government. But in times of emergency exceptions may be made. The duty of directing, supervising and distributing the work among the judges of a civil or criminal division falls upon the presiding judge. The cases are taken up in the order

presented. To prevent unnecessary delay, which means injustice, the President of the Supreme Court may set a time limit within which decisions must be rendered. To discourage frivolous appeals the judge will examine first whether or not the appeal is worthy of consideration. If the result of his finding proves negative, it is thrown out without further investigation. On the other hand, a case which is worthy of consideration will be thoroughly scrutinized. In case the presiding judge thinks that an oral debate is necessary, a date will be arranged for that purpose. As a matter of fact, oral debate is extremely rare. For the questions that come before the Court are questions of law, not of fact. The decision is made by the judge in charge of the case in consultation with the judges of his own chamber. The Supreme Court is not bound by previous decisions. But, as has been noted, a change of the previous decision can be made only when it is agreed upon by the judges of the various divisions with the approval of the President of the Judicial Yuan.

In three respects the Supreme Court in China differs from that in the United States. In the first place, the Chinese Supreme Court is not vested with the power of declaring laws unconstitutional. In the second place, the Doctrine of *stare decisis*, that is, a court will always follow preceding decisions, is not observed in China. The Chinese Supreme Court may change a previous ruling and establish a new one. Thirdly, while the Supreme Court in the United States has original jurisdiction over two classes of cases—those involving ambassadors or other public ministers and those in which a state is a party,<sup>1</sup> all cases that come before the Chinese Supreme Court are appeals from lower courts.<sup>2</sup>

<sup>1</sup> Munro: Government of the United States, p. 490.

<sup>2</sup> Mention must be made, however, of the fact that according to art. 36 of the old Law governing the organization of the Supreme Court promulgated in 1916 the Chinese Supreme Court had original jurisdiction over those cases which, by law or ordinance, should fall under its jurisdiction.



THE COURT OF ADMINISTRATIVE JUSTICE<sup>1</sup>

The Court of Administrative Justice, in charge of trials of administrative cases, is headed by a President who directs the business of the Court and supervises its administration. It has two or three divisions, consisting each of five councillors or judges, one of whom acts as presiding judge. (The President of the Court is concurrently a presiding judge.) Of these five councillors two shall have served as judges before. The councillors of the Court are selected from among those who have (1) had profound studies in Party principles, (2) served as officials of the class of selected appointment for more than two years under the National Government, (3) reached the age of thirty.

The Administrative Court has a chief registrar and from ten to eighteen registrars, whose function is to keep records, to file documents, to keep accounts, etc. The councillors are under the same legal protection as the judges of the ordinary courts, that is, they are guaranteed a permanent tenure and a fixed salary.

THE COMMISSION FOR THE DISCIPLINARY  
PUNISHMENT OF OFFICIALS<sup>2</sup>

The Commission for the Disciplinary Punishment of Officials, as its title indicates, takes charge of disciplinary matters, but those matters which are dealt with by special laws do not fall under its jurisdiction. The Commission has two divisions—the Central and the Local. The Central Commission consists of a Chairman, who is of the class of special appointment (first class), and from 11 to 17 Commissioners, of whom from 6 to 9 are of the class of selected appointment (second class) and the rest are chosen from the judges of the

<sup>1</sup> Its Organization Law was promulgated on Nov. 17, 1932.

<sup>2</sup> Its organization Law was promulgated on June 8, 1931 and revised in June, 1932.

Supreme Court. It exercises its jurisdiction over all officials above the rank of recommended appointment (third class) and officials of the Central Government of the rank of delegated appointment (fourth class). In order to be a Commissioner one must be above thirty years of age and must have had profound studies in law and politics. In addition, he must have one of the following qualifications: First, he must have served as a second class official for more than two years or a third class official for more than five years. Second, he must have rendered meritorious services to the Party and the Government or been engaged in revolutionary work for more than ten years.

In contradistinction to the Central Commission are the Local Commissions, which are established in the different provinces. Each has a Chairman and from 7 to 11 Commissioners, of whom from 4 to 6 are chosen from the judges of the Provincial High Court and the rest are selected from the third class officials of the Provincial Government. The President of the High Court is Chairman. In municipalities which are under the jurisdiction of the Executive Yuan Local Commissions may also be created. In these Commissions the Presidents of the District Courts serve as Chairmen and the Commissioners are chosen from the judges of the District Courts. The jurisdiction of the Local Commissions extends to all disciplinary cases affecting provincial officials of the rank of delegated appointment.

For the investigation of any case a quorum is required. In the case of the Central Commission, seven Commissioners must be present. In the case of the Local Commissions five persons constitute a quorum. In all cases, the Chairman of the Commission, whether Central or Local, who is simply a general supervisor, is debarred from interfering with disciplinary affairs. The term of the Chairman and of the Commissioners is two years. Since the Chairman and some of the Commissioners are *ex officio* members, they automatically

sever their connection with the Commissions if they cease to be the President or judges of the Courts.

The Central Commission has three secretaries and a clerical staff of from 9 to 15 persons. Their work concerns mainly the custody of the seal, the recording of minutes, the compilation of cases, etc. This routine work of the Local Commissions is performed by the officers of the District Courts.

## LAW FOR THE DISCIPLINARY PUNISHMENT OF OFFICIALS .

### (a) *Disciplinary Punishment*

In the handling of disciplinary cases the Commission for the Disciplinary Punishment of Officials as well as other disciplinary organs are guided by a special law, which was promulgated on June 8, 1931. According to it, all officials should be brought to discipline in case of violation of law, or negligence of duty, or improper conduct. The penalties include removal from office, degradation of rank, reduction of salary, the assessment of demerits and censure. (Political officers<sup>1</sup> are not subject to punishments other than removal from office and censure.) Removal from office disables one from receiving any appointment for an interval of at least one year. If one is degraded, no promotion can be made within two years. In case one is already lowest in rank and cannot be degraded, his salary will be reduced. The amount of salary reduction varies with the nature of cases. It may be ten per cent or twenty per cent, and the reduction lasts from one to twelve months. In case one is given a demerit, he may not be promoted within one year. If one is given three demerits within the same year, his salary will be reduced. Censure may be oral or written. All cases of disciplinary punishment must be

<sup>1</sup> According to the resolution adopted at the 198th meeting of the Central Political Council all officers appointed by the National Government as a result of the decision of the Central Political Council are political officers.

reported to the Board of Personnel, which is attached to the Examination Yuan, so that records may be kept there.

### (b) *Disciplinary Organs*

The Commission for the Disciplinary Punishment of Officials is not the only organ of disciplinary punishment. The Central Supervisory Committee of the Party and the National Government are also endowed with disciplinary powers. To the former are referred all cases affecting State Councillors; to the latter all cases affecting other political officers. It is with those officers who are subject to civil service rules that the Commission for the Disciplinary Punishment of Officials is concerned. In general the Control Yuan is the receiving organ of all impeachments or disciplinary cases.

### (c) *Disciplinary Procedure*

Upon receiving a case from the Control Yuan the disciplinary organ, either the Central Supervisory Committee or the National Government or the Commission for the Disciplinary Punishment of Officials, will immediately designate a certain number of commissioners to make an investigation. This power of investigation may be delegated to administrative or judicial offices if so desired. On the part of the impeached parties, the Law requires that they must submit their declarations and replies at a designated time so as to defend their position, a provision much to their advantage. In some cases their personal presence is also required. Should they fail to do these things, disciplinary measures will be decided upon without their declarations and replies.

When a case is serious, the disciplinary organ may suspend the official duties of the one who is impeached even before the adoption of a disciplinary measure.

The law further stipulates that under any one of the following conditions the impeached officials are automatically suspended from office: (1) while they are undergoing a criminal procedure, (2) after it is pronounced that they are deprived of their civil rights, (3) while they are subject to imprisonment.

All decisions are made by a majority vote of those present at the meeting of the disciplinary organ. Should there be three proposed disciplinary measures, they will be arranged in the order of most disadvantageous, less disadvantageous, and least disadvantageous. If the combined votes of the first two proposals constitute a majority, the second proposal will stand. If not, the votes of the first proposal will be added to the third proposal, until a majority is secured. The decision must be signed by all those present and copies of the decision must be sent to the Control Yuan and those who are subject to disciplinary punishment.

All cases that are criminal in character must be referred to the Court for trial. When a case is undergoing a criminal procedure, it is not subject to the rules of disciplinary procedure at the same time. But even after the acquittal of the defendant by the criminal court he is still subject to any disciplinary punishment that may be determined upon by the disciplinary organ.

## CHAPTER X

### THE EXAMINATION YUAN

#### CHINA'S THREE POWER GOVERNMENT • UNDER THE OLD REGIME

COMMENTATORS on the old Chinese government, the government prior to 1911, are in the habit of characterizing it as one without a separation of powers or a system of checks and balances.<sup>1</sup> In so far as the executive, legislative and judicial powers were vested in the Emperor, they are right. But there were two other powers which were neither exercised in accordance with his will nor subject to his interference. They were the examination and supervisory powers. It was they and the executive, legislative and judicial powers of the Emperor that formed the three powers of the old Chinese government in contradistinction to the traditional executive, legislative and judicial powers of the governments in western countries. True, the examination and supervisory powers were not fully made use of; nevertheless they were powers independent of the Emperor.

#### THE ORIGIN AND DEVELOPMENT OF THE EXAMINATION POWER

In choosing government officers three methods have usually been employed, that of recommendation, that

<sup>1</sup>The writer has so characterized the old Chinese government. See Chapter I, pp. 4 and 29.

of election, and that of examination. Prior to 1766 B.C. officers of the Chinese government were chosen on the basis of recommendations. During the Shang (1766-1122 B.C.) and the Chou (1122-255 B.C.) Dynasties the system of election was put into use. After ascending the throne, Wen Ti (176-157 B.C.) of the Han Dynasty (206 B.C.-A.D. 25) summoned the good scholars whom his ministers recommended, and examined them in person, thus combining the systems of recommendation and examination. The practice of the Wei Dynasty (A.D. 220-265) was to station examination officers in different provinces and districts, whose duty was to select those scholars who enjoyed good reputation. From this selected group the royal court made its appointment. Between 265 and 589 the examination officers made their choices from influential families, disregarding the element of personal character. The Sui Dynasty (589-619) changed the practice by placing emphasis upon examination. Those who were successful in the first examination, which was taken in the academies either of the central government or of the districts, might take a more advanced examination at the national capital. Should they succeed in the second examination, which was an examination in classics and essays, they would be given the degree of *Ching Shih*, equivalent to a doctorate in western countries. During the reign of Emperor Kao Tsung (650-683) of the T'ang Dynasty (620-907) scholars were chosen on the basis of moral character, writings, hand-writing,<sup>1</sup> and judging ability. Emperor Chen Tsung (998-1022) of the Sung Dynasty (960-1127) even examined the scholars in person. During the early part of the Ming Dynasty (1368-1644) examinations were held every month and were conducted by government colleges. After accumulating

<sup>1</sup> Chinese scholars still attach great importance to their hand-writing.

eight points, one or one half point at each examination, one might become a "qualified scholar." Later, examinations were classified as local, national, and palace.

Though the system of examination was elaborate, the examination power was never independent of the executive power. It was only after the Manchus came into power that the system of examination began to assume an independent character.<sup>1</sup> Itinerant examination officers were provided for, who conducted examinations in the various prefectures and districts. The successful candidates were given the degree of *Siu Ts'ai* (equivalent to A.B.).<sup>2</sup> In order to qualify themselves to take a more advanced examination in the province, they must pass two other examinations within three years. Those who succeeded in the provincial examination received the degree of *Chu Jen* (equivalent to A.M.). The third examination was given at the national capital, and was taken only by those who had passed the provincial examination. The successful candidates in the national examination were given the degree of *Ching Shih* (equivalent to Ph.D.) and might join the Han-lin-yuan or Academy of Letters. It was in this institution of higher learning that the Emperor made his choices for the different government posts and that the scholars, if not appointed, might continue their studies. The Han-lin-yuan was, therefore, both a reservoir of talents and a training school for government officers. The national examination was followed by a palace examination, which was conducted by the Emperor in person. As a rule twenty three candidates were chosen and the

<sup>1</sup> For the Manchu system of examination see Collective Studies of the Imperial Dynasty, Vols. XLIX-LII (in Chinese).

<sup>2</sup> Dr. Hsien thinks that it is not a degree but a qualification, a qualification that entitles one to take the provincial examination. Whether *Siu Ts'ai* is a degree or not is unimportant, because a degree does, in a way, represent a qualification. See Hsien, Government of China, p. 145.



best three of them had the hope of receiving appointments immediately after the examination instead of entering the Academy of Letters. It is pertinent to remark here that the first three examinations were conducted by special examination officers who were chosen in accordance with fixed rules. Moreover, in the performance of their duties the examination officers were free from royal interference. Once their decisions were given, no change could be made, not even by the Emperor.

### REASONS FOR AN INDEPENDENT EXAMINATION YUAN

Remarkable as was the system of examination of the Manchus, it was far from being satisfactory. In the first place, there was no permanent organ to take charge of the examinations. The examination officers held concurrent positions and owing to their short tenure<sup>1</sup> their sense of responsibility was weakened. Secondly, the examinations were in general of the same type. To recruit workers for the different services of the government through an unclassified examination can hardly be considered sound either in principle or in practice. Thirdly, the subjects in which candidates were examined were purely theoretical, and therefore impractical. They consisted of classics, poems, and essays on current problems. Consequently, those successful in the examination often proved to be incompetent in the practical administration of affairs of state.

To maintain the independence of the examination power and to undertake the program of modern civil service commissions, an independent Examination Yuan has been created.

<sup>1</sup> The examiners held office only while the examinations were being conducted. As soon as the examinations were over, they were relieved of their duties.

## THE CIVIL SERVICE SYSTEM IN WESTERN COUNTRIES

### (a) *The English System*<sup>1</sup>

Prior to the adoption of the merit system in the middle of the nineteenth century, the government of England was "decidedly aristocratic." Politicians and landowners dominated practically all branches of government. Appointments to administrative posts were made on the basis of personal favoritism or political preference rather than competency or any particular qualification. Inefficiency and corruption were common. It was no wonder, therefore, that John Bright should speak of the civil service of his time as "the outdoor relief department of the British aristocracy."<sup>2</sup> True, England reformed her House of Commons in 1832; but that reform had nothing to do with the civil service.

Curiously enough, the merit system began with the establishment of a school at Haileybury in 1813 by the East India Company for the training of those who desired to enter into the service of the Company. As a device to weed out incompetent applicants and to recruit the best brains of the United Kingdom the Haileybury school, with its high academic standard, proved a worthy experiment. But the Company's political and commercial power had long been a subject of criticism and attack. In 1853, therefore, a change was brought about, which took away the Company's right of making appointments to political offices in India and provided for a system of open, competitive examination. A year later, Macaulay the

<sup>1</sup> For the English civil service system see Ogg, *English Government and Politics*, pp. 206-239; Marriott, *The Mechanism of the Modern State*, Vol. II, pp. 117-140; Lowell, *Government of England*, Vol. I, pp. 156-172; Munro, *Governments of Europe*, pp. 90-105.

<sup>2</sup> Quoted in Ogg: *op. cit.*, p. 216, footnote No. 15.

historian worked out a detailed scheme for the operation of the new system. In the same year the Treasury's Commission made a report, recommending, *inter alia* the application of the Macaulay plan to the home service. At the same time, it laid down the following fundamental principles, upon which the civil service system of England is built to-day: that admission into the civil service should be based on open, competitive examinations, that a distinction should be maintained between routine and intellectual work of the civil service, that two corresponding types of examination should be employed. The report was the work of Sir Charles Trevelyan, a graduate of Haileybury, and of Sir Stafford Northcote. In 1855 a Civil Service Commission of three members (appointed by the Crown) was created to conduct examinations for candidates to subordinate political offices. The reform movement went on until the Order-in-Council of 1870 made open, competitive examinations obligatory for the entire civil service.

Viewed as a whole the English civil service system of to-day is characterized by six essential features. The first is Treasury control. By the Order-in-Council of 1920, the Treasury is authorized to make regulations for His Majesty's civil establishments and for the classification, remuneration and other conditions of service. Except the matter of discipline, which is handled by the departments, Treasury control, as Professor Ogg has pointed out, is very real and effective. Secondly, all non-political officers, with few important exceptions, secure their admission into the government service through open, competitive examinations. These non-political officers, who hold their positions permanently, are experts, in contradistinction to political officers (such as ministers, under-secretaries, parliamentary secretaries, financial secretaries, civil lords, junior lords, etc.), who are amateurs and who stay in office only so long as their party

remains in power. Thirdly, the examinations are distinctly academic in character. The subjects examined include history, philosophy, economics, political science, languages and natural science. It is the English view that those who are recruited into the service should have a thorough university training, which is considered essential for the development of their natural ability. Fourthly, an attempt has been made to bring the examinations for civil service appointments into harmony with the educational system of the country. This represents the opinion of the enlightened in England and aims to provide the state with talents that may be needed for the varying grades of the civil service. Fifthly, owing to the nature of the examinations and the respectful attitude that the public holds towards the civil service, the men and women that are attracted to the service are of a high quality. Sixthly, the rank and file of the English civil service constitute no bureaucracy. They form no special cliques detrimental to the interests of other classes.

But the history of civil service reform in England is still in the making. "Patronage" has not altogether disappeared. The nature and content of the examinations have quite often aroused criticism and protest.

### (b) *The American System*<sup>1</sup>

The history of the American civil service may be divided into three periods. The first period, extending from 1789 to 1829, was one in which the civil servants were recruited without regard to any formal method, though personal fitness and loyalty to the

<sup>1</sup> For the American civil service system see Procter, *Principles of Public Personal Administration*; White, *Public Administration*, Chapters 10 and 12; Ogg and Ray, *Introduction to American Government*, pp. 281-296; Beard, *American Government and Politics*, pp. 303-322; Munro, *Government of the United States*, pp. 207-211.

federal constitution were laid down by Washington as conditions or qualifications for admission into the federal service. The second period, which extended from 1829 to 1883, and marked by the so-called "spoils system." Making use of the powers conferred upon him by the Tenure of Office Act, which made certain officials (district attorneys, collectors of the customs, navy agents, receivers of public moneys for lands, registers to the land office, etc.) "removable from office at pleasure," President Jackson removed, within eight years, "more men than had been removed in the forty years preceding his administration." For the adoption of this drastic measure many explanations have been given: that Jackson was sincere in his belief that those who held office under Adams, his predecessor, entertained wrong political views; that many of them were his political enemies; that long tenure might lead to laxness and corruption; and that one man had just as much right to public office as another. Regardless of whether or not Jackson was dominated by selfish motives, the "spoils system," once started, was bound to flourish and to result in waste, inefficiency, and political corruption. Between 1829 and 1883 "To the victors belong the spoils" became the accepted order of things. It was not until the Garfield tragedy<sup>1</sup> in the summer of 1881 that the public was awakened to the necessity of a reform in the civil service system. Two years later the first civil service law known as the Pendleton Act went on the statute book. This act, which marks the opening of the third period, established the merit principle. It made provision for a Civil Service Commission of three persons, appointed by the President and Senate, to devise rules and regulations to test the fitness of candidates for offices in the federal service, already classified or to be classified by executive order or by legislative action. The country

<sup>1</sup> In that year President James Garfield was assassinated by an office-seeker whose requests were refused.

is now divided into a certain number of civil service districts in charge of secretaries appointed by the Commission. At Washington there is a chief examiner and in the states and territories there are several hundred local examining boards. Practically all subordinate officers have now been brought under the competitive system. There are, however, groups of officials who are "without the pale." They are (1) officers appointed by the President, (2) officers who are excluded by law from classification.

The examinations are practical in character. Instead of testing the general attainments of the applicants, as the examinations in England do, they aim to ascertain the applicants' proficiency and fitness to discharge the duties of the service into which they seek to enter. The result is not very encouraging. For the men and women that are attracted to the service do not have the education and general ability of the English officials.

Once appointed the civil employees are protected by the "good behavior" principle. The rules require that no officials in the classified service shall be removed from office except "for such cause as will promote the efficiency of the service."

### (c) *The Continental System*<sup>1</sup>

In the two bureaucratic states, France and Germany, admission to the government service is by competitive examination, though political officers are immune from the examination rules. Promotion is made partly by merit and partly by seniority. In France, where extreme centralization is to be found, much work is thrown upon the central government, and the civil service is "larger in proportion to the population

<sup>1</sup>For the French civil service system see Bryce, *Modern Democracies*, Vol. I, pp. 274-279; Marriott, *op. cit.*, Vol. II, pp. 219-224. For the Prussian system see Marriott, *op. cit.*, Vol. II, pp. 216-219.

than that of any other free country." In Germany, particularly Prussia, where the civil servants are admirably trained for the various services, the government is conducted with the utmost efficiency.

### THE ORGANIZATION AND FUNCTION OF THE EXAMINATION YUAN

The Examination Yuan, which was inaugurated in January, 1930, consists of an Examinations Commission and a Board of Personnel. The former has to do with all matters relating to the choice through examinations of civil and diplomatic officers, judges of the courts, technical experts, and other public officers of the government, the organization of commissions for examination purposes, and the holding of public examinations of various kinds. The latter is concerned with the registering of all civil employees and successful candidates of examinations, the rating of efficiency, the investigation of the qualifications, appointment and removal, promotion and degradation, renumeration and rewarding of civil officers. Both the Commission and the Board are headed by a chairman appointed by the National Government upon the recommendation of the President of the Examination Yuan. In addition to the Examinations Commission and the Board of Personnel, the Examination Yuan has a Secretariat and a Counsellor's Office for the administration of the routine and for the drafting of rules and regulations concerning examinations.

### LAWS OF EXAMINATION<sup>1</sup> AND EFFICIENCY RATING<sup>2</sup>

Examinations, by which the qualifications of all candidates to government offices, professionalists and

<sup>1</sup> Though the Examination Law does not mention the immunity of political officers from examination, they enjoy this privilege at present.

<sup>2</sup> Promulgated in August and November, 1929.

specialists are determined, are of three types, ordinary, higher and special. Chinese citizens who possess one of the following qualifications may apply for an ordinary examination: (1) graduates of government or registered private middle schools, (2) those who possess education and experience equivalent to that of middle school graduates and have passed a special examination for the sole purpose of securing their qualification for the ordinary examination. High examinations may be taken by (1) graduates of colleges and universities, government or private (registered), (2) graduates of colleges and universities abroad, (3) those who possess education and experience equivalent to that of college graduates and have passed a special examination for the sole purpose of securing their qualification for the higher examination, (4) those who possess technical knowledge and ability, or have made distinctive contributions in writings which have been considered satisfactory, (5) successful candidates of an ordinary examination after an interval of four years and officers of delegated appointment (fourth class) with three years' experience. But anti-revolutionists, opium-smokers, bankrupts, and those who have been deprived of their civil rights are debarred from taking any of the examinations. Ordinary and higher examinations are held separately in the provinces and at the national capital, either annually or in alternate years.<sup>1</sup> Both examinations consist of three parts: the first part is the examination on Chinese and Party principles; the second part is the examination on specified subjects; the third part is the oral examination. All examinations are supervised by delegates from the Control Yuan. Successful candidates are given certificates.

<sup>1</sup> The first higher examination was held in July, 1931 in the national capital. It was attended by two thousand applicants who came from twenty-five different provinces. The examination was divided into five sections: general, diplomatic, police, educational, and financial. One hundred participants were awarded certificates.



For judicial and diplomatic officers two separate types of examination are provided.

Another important function of the Examination Yuan, or rather its Board of Personnel, is the investigation and approval of the reports made by the various government offices concerning the work of civil employees other than political officers. This efficiency rating or examination of the work of government agents is of great importance, for it determines their promotion or degradation.

### PAYMENT AND PENSIONS

In order to seek out the best talent available and to retain an efficient staff, it is necessary that the pay be adequate and that the employees be assured of financial support after retirement from service either due to physical incapacity or old age. Two laws dealing with these two fundamental problems of the civil service have, therefore, been promulgated. The one provides for a scale of salaries ranging from sixty to eight hundred dollars per month for four specified classes of civil officers—that of delegated appointment, that of recommended appointment, that of selected appointment and that of special appointment. With the exception of the starting salary which is low in comparison with the pay in private employ, the scale is quite satisfactory. The trouble in China is not low or inadequate pay but irregular pay or no pay.

The other law establishes a system of pensions which are of three kinds: life pensions, lump-sum pensions (pensions given at one time) and pensions for the family of the deceased. Under any one of the following conditions civil employees are entitled to the enjoyment of life pensions: (1) when physically incapacitated in the discharge of official duties, (2) when mentally incapacitated in the discharge of official duties, (3) when physically incapacitated for reasons other than

those encountered in the discharge of official duties after having served the government for ten or more years, (4) on reaching the age of sixty after at least ten years of faithful service. In general one fifth of the salary at the time of retirement is to be given periodically to those entitled to life pensions. But police officers of or below the rank of delegated appointment are given from one half to full salary. Lump-sum pensions are for those who retire on account of physical injury or bodily weakness. The amount varies from two to six months' salary. The families of officers who died because of official duties or laborious work, and the families of officers entitled to life pensions but who die within five years after receiving such pensions, receive from one tenth to one third of the salary at the time of retirement.

## CHAPTER XI

### THE CONTROL YUAN

#### THE ORIGIN AND DEVELOPMENT OF THE SUPERVISORY POWER

THE origin of the supervisory power in China dates back to the Ch'in Dynasty (249-206 B.C.), during which the censors in the prefectures were entrusted with supervisory functions. But it was not until the T'ang Dynasty (A.D. 620-907) that the censorate began to develop. Between the T'ang and Sung Dynasties the supervisory power was exercised by two types of offices, the *T'ai* and the *Chien*, meaning the platform and the petition respectively. The function of the *Chien* was to offer advice to the Emperor; that of the *T'ai* was to correct the wrong practices of government officers. During the Sung Dynasty (960-1127) there was the petition council composed of petitioners and supervisors. The Ming Dynasty (1368-1644) brought the petitioners and supervisors under one office known as *Mên Hsia*, meaning literally "under the gate." The important functions of this office were to transmit or to amend, if necessary, the petitions presented by the ministers to the Emperor and to offer advice to the Emperor so as to guide his conduct. The Ming Emperors also established a separate system of censors to perform supervisory functions in thirteen circuits into which the entire nation was divided. The Manchu Dynasty (1644-1911) continued the Ming system of censors, but the number of circuits was increased from thirteen to fifteen.

The censorate, good and desirable as it was, was nevertheless defective. Firstly, in spite of the freedom and independence which the censors enjoyed in the performance of their duties, the supervisory power was derived from the Emperor, not from the people. Secondly, the censors were "the ears and eyes of the Emperor," so to speak, representing his interests and acting on his behalf. Thirdly, since the Emperor was the fountain of political power, there was no way to force him to accept the advice of the censors, whether expressed in petitions or in impeachments.

The Revolution of 1911 not only eliminated the Manchus from the political arena but also destroyed their three-power governmental scheme.<sup>1</sup> For instead of keeping the examination and supervisory powers independent, the Provisional Constitution of 1912 vested them in the executive and legislative departments. The Organic Law of October, 1928 and the Provisional Constitution of May, 1931<sup>2</sup> did more than the mere restoration of the powers. They kept them independent and left them to be exercised by organs that represent the will of the people. In other words, the system of government now in operation is built on democratic principles.

### WHY AN INDEPENDENT CONTROL YUAN

It is a noticeable fact that political institutions of modern states are founded on the principle of checks and balances. Thus the legislature is vested with the power to question,<sup>3</sup> interpellate,<sup>4</sup> and impeach<sup>5</sup> executive officers and the judiciary is given the power to interpret

<sup>1</sup> The three powers of the old Chinese Government were the examination power, the supervisory power, and the executive, legislative and judicial powers of the Emperor. See p. 198.

<sup>2</sup> For the "five-power" government set up by the Organic Law and the Provisional Constitution see pp. 129-135.

<sup>3</sup> The English, French and German legislatures for example.

<sup>4</sup> The French and German legislatures.

<sup>5</sup> The legislatures of practically all countries.

the constitution and to declare laws null and void.<sup>1</sup> The exercise by the legislature of supervisory functions is, however, unsatisfactory.<sup>2</sup> In the first place, it is difficult for the executive officers to be responsible to two chambers, in case of a bicameral legislature, without pleasing the one and displeasing the other. In the second place, it is difficult for the party in opposition in the legislature, which is in the minority, to bring to success any case of impeachment since the legislature is under ordinary circumstances controlled by the majority party. Moreover, according to the practices in western countries impeachments can be initiated only by the lower chamber and on specific grounds. In the third place, the legislature is primarily a law-making body. For the legislator to perform supervisory functions would divest his time and energy from intelligent legislation. In the fourth place, being a partisan body, the legislature may use the power of impeachment in promoting the interests of the legislators rather than those of the nation.

#### THE ORGANIZATION AND FUNCTION OF THE CONTROL YUAN

According to the Law Governing the Organization of the National Government, "the Control Yuan shall be the highest supervisory organ of the National Government and shall, according to law, exercise the following functions: (1) impeachment, (2) auditing." The same law stipulates that it shall be composed of from 29 to 49 members, to be appointed by the National Government at the instance of the President of the said Yuan.<sup>3</sup> The President and Vice-President of the Yuan are elected by the Central Executive

<sup>1</sup> Notably in the United States.

<sup>2</sup> See the discussion on pp. 127-128.

<sup>3</sup> The quasi-elective plan as provided in the Law of December, 1931 was discarded at the Third Plenary Session of the Central Executive and Supervisory Committees of the Fourth National Congress of the Kuomintang held in December, 1931.

Committee of the Kuomintang. The Control Yuan has a Board of Audit, which is charged with the following functions: (1) to examine the estimates and financial statements of all government offices, (2) to supervise the execution of their budgets, (3) to certify the orders of government offices concerning both revenue and expenditure, (4) to investigate into all cases of delinquency in financial matters such as irregularities, misuse of power, negligence of duty, and illegal conduct. The Board consists of a President and a Vice-President, from 9 to 12 auditors, from 12 to 16 assistant auditors, and from 8 to 10 inspectors. In the provinces and municipalities which are under the direct jurisdiction of the Executive Yuan, Auditing Offices are created to facilitate the work of the Board. The Control Yuan has also a number of itinerant supervisors to be sent to different supervisory districts to perform impeaching functions. The members of the Yuan may be *ex officio* supervisors. The Secretariat and the Counsellor's Office are charged with the daily routine.

#### LAW GUARANTEEING THE INDEPENDENCE OF THE MEMBERS OF THE CONTROL YUAN

Just as judges of the law courts are under legal protection so are the members of the Control Yuan. A law guaranteeing their independence was passed by the Legislative Yuan on June 4, 1932. Except under any one of the following conditions, no member of the Control Yuan may be removed, suspended, transferred, or fined, viz. (1) when excluded from the Kuomintang, (2) when subject to a criminal sentence, (3) when debarred from taking control of property, (4) when subject to disciplinary punishment, (5) when transferred to any other office with his approval (art. 1). Moreover, without the consent of the Control Yuan he may not be arrested or imprisoned, unless he has been declared a criminal (art. 2). Even in case of his being

arrested, the government office which makes the arrest must report to the Control Yuan within twenty-four hours, stating the reasons of his arrest (art. 2). Furthermore, except under any one of the following conditions, he may not be considered as having abused his office: (1) having received gifts from government officers, (2) having refused to institute an impeachment against officers of the Central Government or those in his supervisory district whom the people have impeached, (3) having been induced to institute an impeachment which is not founded on facts (art. 4). Finally, even if he is impeached or considered to have abused his office, he may not be subject to disciplinary punishment, unless his case is investigated by three other members and his punishment is decided by a majority of the members of the Yuan (art. 5).

#### RULES GUIDING THE WORK OF SUPERVISORS<sup>1</sup>

The supervisors are appointed by the National Government upon the recommendation of the President of the Control Yuan (art. 1). Vested with the power of impeachment, they travel in their supervisory districts and oversee the activities of all government officers therein (arts. 2 and 3). According to the rules of supervision, all impeachments must be in written form to be accompanied by facts and evidence (art. 4). •In serious cases, public officers who have violated national laws or have abused their offices may be immediately dealt with by their superiors on the request of supervisors (art. 6). Against such officers impeachments may be laid before the Control Yuan later. The supervisors may also interpellate public officers in their districts (art. 5). They may further receive petitions from the people, impeaching public officers;

<sup>1</sup> Adopted by the Legislative Yuan on June 4, 1932.

but to such petitions no replies shall be made (art. 7). Reports shall be submitted to the Control Yuan at regular intervals, and the following shall particularly be noted by the supervisors: (1) the projects and work of government officers in their districts, (2) the conduct of government officers in their districts, (3) the complaints and sufferings of the people in their districts (art. 8).

### IMPEACHMENT LAW<sup>1</sup>

Upon receiving an impeachment bill, which must be in written form and accompanied by relevant documentary evidence, the Control Yuan immediately appoints a committee of three (other than those introduce the impeachment) to take up the case (arts. 4 and 5). If the majority of the committee agree that the impeached official should be subject to disciplinary punishment, the Control Yuan would immediately refer him to the proper disciplinary organ (art. 5). Should the committee of investigation take a different decision, another committee of five would be appointed to give the final verdict (art. 6). Members of the Control Yuan serve in rotation on the committee of investigation (art. 5); but no one is qualified to sit in the committee if he happens to be connected with the case which the committee considers (art. 7). No impeachment bill, after being introduced, can be withdrawn (art. 8). Neither can it be made public before it goes to the disciplinary organ (art. 10). The President of the Control Yuan cannot direct or interfere in the impeachment proceedings (art. 9). Impeachments are usually initiated by the members of the Control Yuan, either individually or collectively, but they may also be introduced by the people (art. 13). Violations of law and abuse of office are good grounds for impeachment (art. 2).

<sup>1</sup> Revised by the Legislative Yuan on June 4, 1932.



## DISCIPLINARY ORGANS

The functions of the members of the Control Yuan are to initiate impeachments and to accept or reject them. The power to decide upon the kind of punishment that is to be imposed upon the impeached officials is vested in three other organs, namely, the Central Supervisory Committee of the Kuomintang, the National Government and the Commission for the Disciplinary Punishment of Officials.<sup>1</sup> To the Central Supervisory Committee are referred all cases affecting State Councillors, to the National Government all cases affecting other political officers, to the Commission for the Disciplinary Punishment of Officials all cases affecting those officers who are subject to civil service rules.

## THE WORK OF THE CONTROL YUAN

Though young in age, the Control Yuan has not been slow in its work. Since its inauguration in March, 1931 it has handled more than one hundred cases. This is no easy task. For the Control Yuan does not limit itself to the work of initiating impeachments, or of finding fault as the people would say; it is also engaged in the tedious work of investigating facts, of securing evidence. Of all the cases that have been brought to its attention, more than twenty relate to officers of the second class, four to officers above the second class. The popular notion that officers of the higher grade are immune from impeachment is, therefore, erroneous. The case of Wang Ching-wei, President of the Executive Yuan, is sufficient to prove the contrary.<sup>2</sup>

<sup>1</sup> For the disciplinary punishment of officials, disciplinary organs and disciplinary procedure see pp. 195-197.

<sup>2</sup> For the impeachment of Wang Ching-wei by the Control Yuan see Chapter VIII, pp. 188-189.

## CHAPTER XII

### LAW AND LAW COURTS

#### JUDICIAL REFORM IN CHINA BEFORE THE REVOLUTION OF 1911<sup>1</sup>

FROM the standpoint of modern jurisprudence the system of law<sup>2</sup> and the administration of justice under the Manchus were utterly inadequate. Among other things may be mentioned the want of judicial independence,<sup>3</sup> severe punishment, the doctrine of extensive responsibility,<sup>4</sup> torture to extort confession, and the reversal of the principle that the accused is presumed to be innocent until proved guilty. Reforms began to be made, however, after the conclusion of the Mackay Treaty with Great Britain in 1902 and the Commercial Treaties with the United States and Japan in the following year, which promised the abolition of

<sup>1</sup> For the judicial reform in China, both before and after the Revolution, see "Law Reform in China" by Wang Chung-hui, *Chinese Social and Political Science Review*, Vol. II, No. 2, June, 1917, pp. 13-21; "Development of Modern Legal Institutions and Judicial Reform" by Kiang Yung, *China Law Review*, Vol. II, No. 3, 1925, pp. 117-134; "History of Judicial Reforms in China" by Chang I Pang, *China Law Review*, Vol. I, No. 4, Jan. 1923, pp. 156-166; "The Present Condition of the Chinese Judiciary and Its Future" by Chang Yao-tseng, *China Law Review*, Vol. II, No. 7, Jan. 1926, pp. 311-318.

Tyau: *China Awakened*, pp. 244-262.

Millard: *The End of Extraterritoriality*, Appendix E.

<sup>2</sup> Constitutional law does not fall under this present discussion.

<sup>3</sup> In the provinces judicial powers were vested in the district magistrate, the prefect, the circuit intendant, the commissioner of justice, and the governor or viceroy. In the national capital they were distributed among the Board of Punishment, the Board of Revenue, the Grand Court of Revision and the Censorate.

<sup>4</sup> The theory was that the members of a family were mutually responsible for one another's conduct and welfare. If one was destitute, the other members of the family were duty bound to render him aid. On the other hand, if he committed a crime, the entire family might be held responsible.

extraterritoriality on condition of successful judicial reform. In 1902 a Law Codification Commission known as Hsiu Ting Fa Lu Kwan was created, consisting of Sung Chia-pen, Yuan Shih-kai, Prince Tsai Chen and Dr. Wu Ting-fang, with whom were associated two Japanese experts, Chotario Obata and Masayoshi Matsuoka. The primary function of the Commission was to revise the Ta Ts'ing Lu Li, which was supposed to be the *corpus juris* of China but was, in substance, hardly anything more than a penal code. After having made a careful study of the Ta Ts'ing Lu Li, the Commission annulled 345 of its provisions which were considered obsolete. The most notable change or improvement made was the abolition of punishment by decapitation and lingering death and of torture to extort confession. The revised code was named Hsien Hsing Hsin Lu, meaning the Criminal Law in Force and was promulgated in 1909. In addition to its revision of the penal code the Commission also prepared a number of draft codes: civil law, criminal law, laws of civil and criminal procedure, bankruptcy law, admiralty law, law of negotiable instruments, etc. In 1906 the Board of Punishment was transformed into the Ministry of Justice, charged with the function of judicial administration. In the following year a Law Governing the Organization of Courts was promulgated, a step forward towards judicial independence. Two years later Regulations Governing the Organization of Courts in the Provincial Capitals and Commercial Ports were also adopted. Unfortunately however, only little was done towards the realization of these paper reforms.

### THE PERIOD OF TRANSITION, 1912-1928

Busied with other things, the new Republic went slow in judicial reform. As a matter of fact, the Parliament chose to wage a battle with the chief executive rather

than devote itself to the work of legislation. The result was tragic. Not only did the Parliament fail to perform its primary function, namely, to legislate: it was wiped out of existence by the strong-willed President, Yuan Shih-kai. Though reconvened after the death of the Emperor-President, again it was dissolved by President Li Yuan-hung under the pressure of the militarists.

The conflict between the executive and the legislature and the dissolution of the latter should not, however, be construed to mean that no judicial reform whatsoever had been inaugurated since the establishment of the Republic. Rather the contrary. By the Presidential mandate of March 10, 1912 all laws promulgated by the Manchu Government were made tentatively applicable, except those which were contrary to the form of the State. Likewise the draft Criminal Code of the Manchus, which, after revision by the Ministry of Justice, assumed the title Provisional New Criminal Code. Supplementary to this Criminal Code were the Criminal Code Amendment Act promulgated in 1914<sup>1</sup> and other regulations concerning criminal actions.<sup>2</sup> In 1912 a new Law Codification Commission was formed, to which was entrusted the work of revising the Criminal Code so as to bring it into accord with western standards. As the first revision which was done under the dictatorial regime of Yuan Shih-kai was not thorough-going, a second revision was

<sup>1</sup> The Amendment Act of 1914 was a drawback. The changes it introduced were simply to suit the personal wish of President Yuan Shih-kai. For the criticism of this Act see "History of Judicial Reforms in China" by Chang I Pang, *China Law Review*, Vol. I, No. 4, Jan. 1923, pp. 156-166.

<sup>2</sup> Law Relating to the Punishment of Robbers and Brigands, Nov. 27, 1914; Revised Law on Offenses Relating to Morphine, Dec. 31, 1914; Law Relating to the Salt Monopoly, Dec. 22, 1914; Regulations Concerning Military Criminal Cases, March 18, 1915; Regulations Concerning Naval Criminal Cases, April 7, 1916; Law Relating to Offenses Against the Credit of Government Bonds, Nov. 29, 1914; Regulations for the Repression of Corruption Among Officials, March 29, 1921; Regulations Relating to the Traffic in Poppy Seeds and Opium, Dec. 20, 1914; Regulations Forbidding the Smelting of Brass Coins of the Late Ts'ing Dynasty, Jan. 20, 1916; Regulations for the Suppression of Offenses Relating to Charitable Donations, Oct. 19, 1920.

ordered. In the meantime, the Law Codification Commission was reconstructed, with Dr. Wang Chung-hui as chairman and M. Georges Padoux, a French jurist of international repute, Mr. Tung K'ang, Chief Justice of the Supreme Court, and Dr. Lo Wen-kan, sometime Procurator-General of the Republic as his associates. The Commission lost no time in its work of revision and codification, and in 1921 the second revision of the Criminal Code was completed. It is rather unfortunate that for one reason or another the revised code failed of promulgation.

Though far from being satisfactory, the Provisional Criminal Code and the fragmentary rules and regulations relating to criminal cases could temporarily meet the situation. With civil law however, the question was not so simple. On the one hand, the people demanded that their civil rights be better protected. On the other, the disjointed rules<sup>1</sup> were too rudimentary in character and too limited in scope to handle the cases that swarmed the courts created under the Republican regime. The situation seemed hopeless. But fortunately there came two remedies. One was the power of the Supreme Court to "unify the interpretation of laws."<sup>2</sup> The other was the rule laid down by the Supreme Court that "Civil cases are decided first according to the express provisions of law; in the absence of express provisions, then according to customs; and in the absence of customs, then according

<sup>1</sup> The Civil Law comprised the following regulations:

1. Regulations Relating to the Settlement of Debts in Mortgage Deeds, Oct. 6, 1915.
2. Regulations Concerning the Concessions of Waste Land Belonging to the State, March 3, 1914.
3. Forest Law, Nov. 3, 1915.
4. Regulations Relating to Mining Enterprises, March 11, 1914.
5. Law of Copyright, Nov. 7, 1915.
6. Expropriation Law, Oct. 22, 1915.

<sup>2</sup> This power was based upon the Law Governing the Organization of Courts and was expanded by the Supreme Court Regulations so as to include the powers, (1) "to explain and answer doubtful points," (2) "to rectify in the interests of the State, any erroneous interpretation of statutes or ordinances that may have been rendered by any public office or official."

to legal principles." Through the power of interpretation, or rather the power of unifying interpretation, the Supreme Court has been able to build up a system of unwritten law which is frequently applied even to-day. By the second rule it has introduced into China the fundamental principles of modern codes in force in western countries, a thing highly desirable at the transitional period. At the present time, the President of the Judicial Yuan is also vested with the power of unifying the interpretation of laws and ordinances, but this can be done only when the President of the Supreme Court and the presiding judges of the criminal and civil chambers of the Court agree.<sup>1</sup>

In the realm of commerce the following regulations were enforced during the period of transition, that is, from 1912 to 1928:

1. General Regulations on Traders, March 2, 1914.
2. Regulations Concerning Commercial Associations, January 13, 1914.
3. Law Governing Stock Exchanges, December 29, 1914.
4. Regulations on Commodities Exchanges, March 5, 1921.
5. Law Relating to Chambers of Commerce, September 11, 1914.
6. Law Relating to Trade Marks, May 3, 1923.
7. Detailed Regulations for the Execution of the Trade Marks Law, May 8, 1923.

In adjective law or law of procedure the following may be mentioned:

1. Regulations Relating to Civil Procedure, July 22, 1921.
2. Regulations Concerning Execution in Civil Cases, August 3, 1920.
3. Regulations Relating to Criminal Procedure, November 14, 1921.
4. Regulations Relating to the Enforcement of the Regulations Relating to Criminal Procedure, November 14, 1921.
5. Regulations Relating to Legal Costs, July 20, 1920.
6. Provisional Regulations Relating to Arbitration in Civil Cases, August 8, 1921.

<sup>1</sup> See Chapter IX, p. 190.

7. Regulations Governing Commercial Arbitration Courts, January 28, 1913.
8. Judicial Police Regulations, April 4, 1920, revised April 4, 1924.
9. Regulations Relating to Sentence by Order, December 28, 1920.
10. Regulations Relating to Courts-martial and Procedure in Military Cases, March 25, 1915.
11. Regulations Relating to Courts-martial and Procedure in Naval Cases, March 24, 1918.
12. Provisional Regulations Relating to Summary Procedure in Criminal Cases, January 25, 1922.
13. Regulations Concerning the Judgement in Civil and Criminal Cases to Which Aliens of Non-treaty Countries Are Parties, May 23, 1919.

The Regulations Concerning the Organization of the Court of Administrative Justice (March 31, 1914), the Law of Administrative Procedure (July 20, 1914), the Law of Petition (July 20, 1914), the Ordinance Relating to District Self-government (Sept. 7, 1919), the Ordinance Relating to the Government in Rural Districts (July 3, 1921) and the Ordinance Relating to Municipal Government (July 3, 1921) constituted another branch of law known as administrative law.

Concerning the organization of courts,<sup>1</sup> there was the Law of 1909, which, like other laws of the Manchus remained in force under the Republic. In fact, it is still in force at the moment of writing (January 1933), though it has been revised. It provided for four grades of courts and three trials, a typically German system. The Local Courts were at the bottom: above were the District Courts; still above were the High Courts; and at the top was the Supreme Court.<sup>2</sup> Parallel to each

<sup>1</sup> "The Court System of China" by Hsu Chien, *China Law Review*, Vol. I, No. 1, April, 1922, pp. 3-8.

<sup>2</sup> The revised law of 1916 provides for three grades of courts: the District Courts, the High Courts, and the Supreme Court. The function of the Local Courts was performed by the summary divisions of the District Courts. In accordance with the order of the Ministry of Justice, dated June 25, 1932, summary divisions are to be abolished. The plan is to establish a system of three grades of courts with three trials as prescribed in the new Law Governing the Organization of Courts, promulgated in November, 1932.

of these courts was the procuratorate. (Since Nov. 1927 the procuratorate has been attached to each of the corresponding courts.) If a case was initiated in the Local Court, it would be terminated in the High Court. If it was commenced in the District Court, it would be ended in the Supreme Court. In districts where there were no independent courts, justice was administered by the district magistrate, who was assisted by assessors nominated by him and approved by the High Court.<sup>1</sup>

During the regime of Yuan Shih-kai local courts were abolished (1913). Judicial independence and dictatorship are incompatible. But summary divisions in the district courts were created shortly after, which, to this day, have served as courts of first instance.

The new Law Governing the Organization of Courts, promulgated in November, 1932, provides for three grades of courts and three trials. The date of enforcement however, will be determined by an ordinance.<sup>2</sup>

### CHINA'S NEW LAWS

Since the completion of the northern expedition in 1928, the National Government has made unremitting efforts in legal reform. Though the Law Codification Commission of the Peking Government, to which is attributed the drafting of numerous codes, is no longer in existence, new institutions, such as the Law Codification Commission of the Ministry of Justice (advisory in capacity) and the Law Codification Committee of the Legislative Yuan, have been brought into being to continue its work. As a result, laws and regulations of one kind and another have been promulgated.

<sup>1</sup> Though this is still the practice in the districts of the interior provinces, efforts are being made to abolish it.

<sup>2</sup> See art. 91 of the new Law Governing the Organization of Courts, promulgated in November, 1932.



They may be grouped as follows:<sup>1</sup>

*I. Civil Laws*

*A. Civil Code*

1. General Principles, October 10, 1929.
2. Obligations, May 5, 1930.
3. Rights Over Things, May 5, 1930.
4. Law of Family, May 5, 1931.
5. Law of Inheritance, May 5, 1931.

*B.* According to the classification adopted by the Peking Government, the following laws would belong to the category of Commercial Laws. The present combination is a unique feature of the Chinese legal system.

1. Law of Negotiable Instruments, July 1, 1930.
2. Law of Trade Marks, January 1, 1931.
3. Law of Exchange, October 3, 1929.
4. Company Law, July 1, 1931.
5. Law of Insurance, December 30, 1929.
6. Law of Admiralty, January 1, 1931.
7. Law of Chambers of Commerce, August 15, 1929.

*C. Land Law, June 30, 1930.*

*II. Criminal Laws*

1. Criminal Code of the Republic of China, September 1, 1928.
2. Detailed Rules for the Application of the Criminal Code of the Republic of China, September 1, 1928.
3. Provisional Regulations Governing False Accusation in Special Criminal Offenses, July 24, 1928.
4. Provisional Regulations Relating to Suppression of Robbers and Brigands, November 18, 1927.
5. Regulations Relating to Suppression of Kidnapping, November 21, 1928.
6. Anti-opium Law, July 25, 1929.
7. Criminal Code for Military, Naval and Aerial Cases, September 25, 1929.
8. Law of Punishment for Persons in Military, Naval and Air Services, October 7, 1930.

*III. Procedural Laws*

1. Law of Civil Procedure (arts. 1-534), December 26, 1930; (arts. 535-600), February 13, 1931.

<sup>1</sup> The dates indicated are the dates of enforcement.

2. Regulations Relating to Civil Procedure, promulgated by the Military Government at Canton, March 2, 1921.
3. Law of Criminal Procedure, September 1, 1928.
4. Criminal Procedure for Military, Naval and Aerial Cases, March 24, 1930.

#### IV. *Labor Laws*

1. Rules for Settling Disputes Between Capital and Labor, June 9, 1928, revision, March 7, 1930.
2. Rules Relating to the Organization of Labor Unions, July 9, 1928.
3. Law of Workmen's and Merchants' Guild, August 17, 1929, revision August 9, 1930.
4. Law of Labor Unions, October 21, 1929.
5. Factory Law, December 30, 1929.

#### V. *Health Laws*

1. Regulations Relating to Obstetricians, June 19, 1928.
2. Regulations Relating to Mid-wives, July 30, 1928.
3. Regulations Relating to Prevention of Infectious Diseases, July, 1928.
4. Regulations Relating to Medical Practitioners, May 27, 1930.

#### VI. *Administrative Laws*

1. Law Governing the Organization of Provincial Governments, March 23, 1931.
2. Law Governing the Organization of District Governments, July 7, 1930.
3. Law Governing the Organization of Municipalities, May 20, 1930.
4. Law Governing the Organization of the Court of Administrative Justice, November 17, 1932 (date of promulgation).
5. Law of Petition, March 24, 1930.
6. Law of Administrative Procedure, November 17, 1932 (date of promulgation).
7. Law Governing the Execution of Administrative Cases, November 25, 1932 (date of adoption by the Legislative Yuan).

The putting into effect of so many Laws and Regulations is of great significance.<sup>1</sup> It is significant

<sup>1</sup>The laws enumerated above represent only the most important ones. It is impossible within this limited space to exhaust the entire list which includes a great many others. For the laws promulgated by the National Government see *China Year Book 1931-2*, pp. 759-762. At the meeting of the Fourth Anniversary of the Legislative Yuan Mr. Shao Yuan-chung, Acting President of the Yuan, reported that in four years 412 laws and regulations have been passed by the Legislative Yuan.

because firstly, it is a manifestation of China's endeavor to establish a government of laws, and secondly, it shows the determined effort of the National Government to abolish the extraterritorial system.

Judged from their substance as well as spirit, the new laws of China have been admirably worked out. Through the creation of independent courts, whose judges are carefully selected, adequately paid, and guaranteed a permanent tenure, judicial independence is maintained. The doctrine of extensive responsibility has been discarded. No act is an offense unless expressly prescribed as such in the law. Punishments shall be determined within the prescribed maximum and minimum after due consideration of all the circumstances of the case, especially the following:

1. The cause of the offense.
2. The motive of the offense.
3. The provocation for the offense.
4. The mode of living of the offender.
5. The previous relation between the injured and the offender.
6. The past conduct of the offender.
7. The intelligence of the offender.
8. The result of the offense.
9. The conduct of the offender after the commission of the offense.

Furthermore, a distinction is maintained between intentional and unintentional acts, and the accused is presumed to be innocent until proved guilty. In a word, the laws of China are in perfect accord with the modern codes of western countries.

### THE ORDINARY COURTS

According to the new Law Governing the Organization of Courts, the Chinese judiciary consists of three grades of courts: the District Courts, the High Courts

and the Supreme Court. (Though the Law has not yet been put into effect, these courts, which have long been in existence, are in active service.) The District Court is a court of first instance. Its jurisdiction coincides with the boundaries of a district or municipality. But in case of small districts or municipalities the judicial area of the Court may contain several of them. On the other hand, if a district or municipality is large in size, Divisional District Courts may be created. The District Court may divide itself into civil and criminal chambers if it has six or more judges. Unless otherwise provided by law, its jurisdiction covers all civil and criminal cases of the first instance. All cases, except the serious ones, are tried by a single judge.

Appeals from the District Courts are to be taken to the High Court, which also takes cognizance of all criminal cases in the first instance relating to offenses against the internal and external security of the State and friendly relations with foreign States. The number of civil and criminal chambers in the High Court is determined by the amount of litigation. Each province is equipped with a High Court, but a large province may warrant the creation of Divisional High Courts. Unlike the practice in the District Courts all trials are conducted by a plural bench of three judges, one of whom presides.

The Supreme Court, to which reference has been made, is the highest tribunal of the land.<sup>1</sup> Unlike the Supreme Court of the United States it has no original jurisdiction whatsoever. The cases with which it deals are appeals from lower courts.

Attached to each of these courts is the procuratorate. Its function is to investigate into criminal charges that are brought to its attention, to commence prosecutions, to conduct all legal proceedings on behalf of the State, to assist and undertake lawsuits initiated

<sup>1</sup> See Chapter IX, pp. 191-192.

by the aggrieved party,<sup>1</sup> and to see that judgements are properly executed.

As far as statistics go (up to April 1932), there are in existence in China 452 modern courts<sup>2</sup> which are distributed as follows:

Supreme Court .....	1
High Courts .....	27
Divisional High Courts .....	38
District and Hsien Courts .....	386

The judicial program of the Government includes the establishment, in the course of six years (the period of political tutelage, 1930-1935), of 3,431 modern courts. The first step which is being undertaken is the abolition of the exercise of concurrent judicial powers by the district magistrate.

### MODERN PRISONS

Since the modern conception of criminal justice is not the punishing of the criminal but his reformation, the construction of modern prisons has become an essential part of the program of judicial reform in China. Instead of being the "hells above ground" they used to be called, Chinese prisons are now being constructed after the western model. In 1926 there were 63 modern prisons. But the number has been increased to about 90<sup>3</sup> distributed in the different provinces as follows:

Kiangsu .....	8	Anhwei .....	4
Hopei .....	6	Kiangsi .....	3
Liaoning .....	15	Chekiang .....	4
Kirin .....	3	Fukien .....	3
Heilungkiang .....	1	Hupeh .....	2
Shantung .....	7	Shensi .....	6
Honan .....	3	Kansu .....	4
Shansi .....	6	Yunnan .....	1

<sup>1</sup> Minor criminal cases can be initiated by the injured party, not necessarily the procurator, art. 337, Law of Criminal Procedure.

<sup>2</sup> The modern courts in operation can be found in the *China Year Book 1931-2*, pp. 762-765. Hsien courts are equivalent to divisional district courts.

<sup>3</sup> The number given in the *China Year Book 1931-2*, is 88. (See pp. 766-767.) They can accommodate 33,000 prisoners. But the prisons in some provinces are not mentioned.

Kweichow .....	2	Suiyuan .....	1
Kwangsi .....	2	Chahar .....	2
Szechuan .....	2	Ninghsia .....	1
Harbin Special District .....	2		

Prisons in China are of four classes, determined by the number of prisoners they can hold. The first class prison holds 1,000 prisoners; the second class, 700; the third class, 500; and the fourth class 300. The plan of the Government is to build 218 modern prisons in six years (1930-1935), in addition to the construction of a number of reformatories, detention houses, lunatic asylums, etc.

### THE APPOINTMENT OF JUDGES AND PROCURATORS

On the selection of judicial officers the new Law Governing the Organization of Courts makes detailed provisions. No one will be appointed a judge or procurator unless he has one of the following qualifications: (1) having passed the judicial officer's examination and undergone the prescribed training, (2) having taught the essential law subjects in public or registered colleges for more than two years and having been adjudged as qualified for judicial appointment, (3) having served as a judge or procurator for more than one year, (4) having practiced law for more than three years, (5) having graduated from law colleges of recognized standing, either at home or abroad, and having made notable contributions in writing on the subject of law.

The judges and procurators (of the class of recommended appointment) of the High Courts,<sup>1</sup> the judges of District Courts who are concurrently presidents, and the chief procurators of District Courts are chosen from those who have one of the following qualifications: (1) having served as judges or procurators for more than

<sup>1</sup> Officers of the government are of four classes: those of special appointment, those of selected appointment, those of recommended appointment and those of delegated appointment. Each High Court has only one judge who is of the class of selected appointment. The rest of the judges are of the class of recommended appointment.

three years, (2) having served as judges or procurators, and administrative judicial officers of the class of recommended appointment for more than four years, (3) having served as judges or procurators, and having taught the essential law subjects in public or registered colleges for more than two years. The judges or procurators (of the class of selected appointment) of the Supreme Court are chosen from those who have one of the following qualifications: (1) having served as judges or procurators of the class of selected appointment for more than one year, (2) having served as judges or procurators of the class of recommended appointment, judges of District Courts who are concurrently presidents, or chief procurators or presiding judges of District Courts, for more than four years, (3) having served as judges or procurators of the class of recommended appointment, judges of District Courts who are concurrently presidents, or chief procurators or presiding judges of District Courts, and administrative judicial officers of the class of selected appointment, for more than five years, (4) having served as judges or procurators of the class of recommended appointment, judges of District Courts who are concurrently presidents, or chief procurators or presiding judges of District Courts, and having taught the essential law subjects in public or registered colleges for more than two years.

As in England and the United States, the judges in China are recruited from the legal profession. They do not represent a separate profession as in France.

Once appointed, they cannot be suspended or removed from office, except in accordance with law. Nor can they be transferred from one place to another, nor their salaries reduced (art. 40 of the new Law Governing the Organization of Courts).

At present judicial appointments are made on the basis of one's education, success in the judicial officer's examination, and previous experience. A

College for the Training of Judicial Officers was established in 1929 by the Ministry of Justice for the training of graduates of law colleges who expect judicial appointments.

### ADMINISTRATIVE JURISPRUDENCE

In reconstructing her system of law and courts China has been subject to the influence of continental European jurisprudence. Hence there arise a separate body of law known as administrative law and a separate tribunal known as the administrative court, designed to regulate the relations between the government and private individuals. In England and the United States, where no distinction is maintained between the acts of an official and those of an ordinary citizen, the laws applicable to the one are equally applicable to the other, and like any body else an officer of the government is answerable for his official acts in an ordinary court if such acts infringe upon the rights of private citizens. In France and Germany, on the other hand, agents of the government are immune from the operation of the ordinary laws and the ordinary courts. Special administrative rules are to be applied to administrative cases and special tribunals are maintained, from which the aggrieved individuals may seek redress. The principle of American and English law is, therefore, equality before the law, while the administrative jurisprudence of continental Europe, based on the ancient legal maxim that "the king can do no wrong," puts the officials on a different level.

Though the continental system has been criticized for giving the public authorities a special status at law and for the possible danger of arbitrary action on the part of the executive, individual rights are better protected in the court of administrative justice than in an ordinary court. As one French writer says, "the litigant knows that he is better protected against



arbitrary administrative action by the Council of State than by the Court of Cassation."

(a) *The Court of Administrative Justice*<sup>1</sup>

The Court of Administrative Justice is the successor of the Ping-chen-yuan, or Administrative Court, created during the regime of Yuan Shih-kai. Like the Council of State in France, it assumes jurisdiction over all administrative cases. It is headed by a President who shall concurrently be the presiding judge of one of its divisions. Each division consists of five councillors or judges, two of whom must have served as judges before. In order to be a councillor one must have three qualifications: (1) having had profound studies in Party principles, (2) having served as an official of the class of selected appointment for more than two years under the National Government, (3) having reached the age of thirty.

The Administrative Court has a chief-registrar and from ten to eighteen registrars, whose function is to keep records, to file documents, to keep accounts, etc.

The councillors are under the same legal protection as the judges of the ordinary courts, that is, they are guaranteed a permanent tenure and a fixed salary.

(b) *The Law of Petition and the Law of Administrative Procedure*<sup>2</sup>

Private citizens may resort to the practice of petitioning, if their rights or interests have been injured by government offices, either central or local, due to violation of law, excess of authority, or bad judgement. Their petitions are, however, not presented to the Administrative Court but to the superior government organs. The procedure may be described as follows:

<sup>1</sup> See Chapter IX, p. 193.

<sup>2</sup> Promulgated on March 24, 1930, and November 17, 1932.

1. Against the District or Municipal Government a petition may be sent to the appropriate bureau of the Provincial Government. If the injured individual is not satisfied with the decision of the provincial bureau, remedy may be secured through the presentation of an appeal to the Provincial Government.
2. Against the bureau of the Provincial Government a petition may be sent to the Provincial Government. If the decision of the Provincial Government is not acceptable to the aggrieved individual, an appeal may be made to the appropriate department or commission of the Central Government.
3. Against the Provincial Government a petition may be sent to the appropriate commission or department of the Central Government. Should the central commission or department fail to settle the dispute, an appeal may be made to the appropriate Yuan.
4. Against a bureau of a Municipal Government which is under the direct control of the Executive Yuan (formerly known as Special Municipal Government)<sup>1</sup> a petition may be sent to the Municipal Government under which that bureau functions. In case the injured party does not accept the decision of the Municipal Government, an appeal may be brought before the appropriate department or commission of the Central Government.
5. Against a Municipal Government which is under the direct control of the Executive Yuan a petition may be sent to the appropriate department or commission of the Central Government. If the plaintiff refuses to abide by its decision,

<sup>1</sup> There are two types of Municipal Government in China, one under the control of the Provincial Governments, the other under the direct control of the Executive Yuan.

- he may carry an appeal to the appropriate Yuan.
6. Against a department or commission of the Central Government a petition may be sent to the department or commission concerned. If its decision is disagreeable to the aggrieved party, an appeal may be made to the appropriate Yuan.

In cases which involve excess of authority or bad judgement, two trials, or rather two attempts at adjustment, are permitted. The second decision, the decision rendered after the appeal, is always final. As to cases involving violation of law, however, appeals may be further made to the Administrative Court which is a court of the last as well as the first instance.

All petitions must be entered within thirty days dating from the day following the reception of the notification of the improper act or decision of the government office. The time for journey is not included. If the last day of the period happens to be a Sunday, or national holiday, or any other holiday, such day shall not be counted in the reckoning. Each petition must contain the following particulars:

1. The full name, age, sex, occupation, and domicile of the plaintiff. If the plaintiff is a juridical person, its full name, or the name, sex, and occupation of its representative should be mentioned.
2. The defendant government office.
3. The facts and reasons.
4. The evidence.
5. The government office that receives the petition.
6. The date.

When a petition is entered, a duplicate shall be sent to the defendant government office, which, within ten days from the day following the reception of the duplicate, shall make a reply.

Petitions may be dismissed, but reasons must be

given for the dismissal. Until the pronouncement of the second decision, all acts or decisions of the defendant government office remain valid. Stay of execution may be granted when it is deemed expedient.

Officials who shall be subject to disciplinary punishment or shall be held responsible for a criminal act, due to violation of law or improper conduct, are to be sent to their superior government office for the execution of the decision against them.

In spite of their judicial function, namely, the adjudicating of cases between subordinate government offices and individual citizens, the superior government organs are not administrative courts in any sense. There is only one such court in China, the Court of Administrative Justice, to which are referred all cases involving violation of law after relief has been sought up to the highest government authority whose decision the claimants consider unjust.

In the matter of procedure the Court of Administrative Justice is guided by a special law, which, in essence, is similar to the Law of Petition. But three points deserve attention. First, in an administrative case the claimant may ask for compensation for damages. Second, no appeal may be made against the decision of the Court of Administrative Justice. Third, a new trial may be asked for under specified conditions.

### DISTINCTIVE FEATURES OF THE CHINESE JUDICIAL ORGANIZATION AND PROCEDURE

A few words on the distinctive features of the Chinese judicial organization and procedure will serve as a summary. Firstly, with the District Court presided over by a single judge, the High Court by three judges and the Supreme Court by five judges, the Chinese judiciary differs both from the English single judge system and the French collegial system, and is a combination of the two. Secondly, the Chinese courts are localized.

There are no circuit courts in China as in England and the United States. Thirdly, in addition to the ordinary laws and the ordinary courts, there is a distinctive branch of law known as administrative law and a distinctive court known as the Court of Administrative Justice. Fourthly, in spite of the existence of the procuratorate system, minor criminal cases may be initiated by the injured party, not necessarily through the procurator. This has the advantage of preventing arbitrariness in the procurator, so that both the interests of the people and those of the State may be promoted.

## CHAPTER XIII

### NATIONAL FINANCE

#### DISORGANIZATION OF CHINA'S PUBLIC FINANCE UNDER THE OLD REGIME

AS has been set forth previously, the absence of a regular system of currency and budget and of fixed responsibility or central control, together with the confusion of government funds and the private property of the Emperor constituted the main features of the financial system of the old regime.<sup>1</sup> It is true that during the latter part of the 18th century the Imperial Government had an almost regular annual surplus;<sup>2</sup> but after China's defeat in international wars, the income of the Government could not meet the outgo. War indemnities, military reorganization, the improvement of the administrative system, the construction of railways, and the promotion and development of educational and industrial enterprises all called for additional funds. As the revenues collected in the provinces were not remitted in full to the imperial treasury and as the import duties were restricted to five per cent *ad valorem* by treaties, making no distinction between necessities and luxuries, the sources of revenue of the Peking Government were limited and the chief means of balancing the budget was, therefore, to contract foreign loans. When more war indemnities were imposed on China, further loans were floated. The situation became even worse when the provinces usurped the right of borrowing money from

<sup>1</sup> See pp. 20-21.

<sup>2</sup> Parker: *China, Her History, Commerce and Diplomacy*, p. 197.

foreign banks and syndicates on their own account in order to pay the allotted portion of the foreign debt contracted by the Central Government. This complexity of China's public finance is well represented by Mr. Wagel who says:

"There is no pool, as there is in the western countries, in the public finance of China. All revenue, from whatever source, is not brought together, and all expenditure, under whatever heading, is not put together. There is neither system nor regularity."<sup>1</sup>

"The main concern of Peking was to keep up the several departments of the Court, the privy purse, jewellery vaults, porcelain, silk and tea stores, dying house, wardrobe, etc., and if, owing to famine, war, or rebellion, the country had to spend amounts not budgeted, it was considered to be the benignant will of the Emperor. Practically nothing returned in benefits to the people, even after the advent of foreign traders in large numbers. There was again the unstable currency, or no currency at all, to complicate matters as much as possible."<sup>2</sup>

"The period, between the Boxer outbreak and the Russo-Japanese War, is not one of great importance in China's financial history, but it is the beginning of an epoch during which the provinces, without any check from Peking, were able to borrow indiscriminately from foreign banks and foreign syndicates."<sup>3</sup>

In spite of this financial disorganization, the Manchus had attempted to draw up a budget in 1911—their first as well as their last attempt at a national budget. The following table shows the estimated income and expenditure of 1911:<sup>4</sup>

#### INCOME

Land tax and grain tribute . . . . .	49,669,858
Salt and tea tax . . . . .	47,621,920
Customs revenue . . . . .	42,139,288
Miscellaneous taxes . . . . .	26,163,842
Likin . . . . .	44,176,542
Rents from government property . . . . .	47,228,437
Sales of official ranks and titles . . . . .	5,652,333

<sup>1</sup> Wagel: Finance in China, p. 330.

<sup>2</sup> Ibid., p. 343.

<sup>3</sup> Ibid., p. 38.

<sup>4</sup> Ibid., pp. 340-341; p. 349.

Miscellaneous . . . . .	35,698,477
Sale of government bonds . . . . .	3,560,000
<b>TOTAL . . . .</b>	<b>301,910,297 tls.</b>

## EXPENDITURE

Budget of Ministry of Foreign Affairs . . . .	2,782,288
Legations and Consulates . . . . .	343,727
Constabulary . . . . .	4,352,040
Budget of Ministry of Finance, including interest on foreign debts . . . . .	111,249,315
Education . . . . .	2,747,477
Army . . . . .	77,915,890
Navy . . . . .	9,997,947
Justice . . . . .	6,643,829
Communications . . . . .	37,560,097
Agriculture, Industry and Commerce . . . .	5,453,833
Dependencies . . . . .	1,688,560
Grants in aid to the provinces . . . . .	37,703,362
<b>TOTAL . . . .</b>	<b>298,448,365 tls.</b>

In name there was a surplus of tls. 3,461,932. In actual fact, the amounts of revenue were more or less imaginary and had the least prospect of realization.

## HISTORY OF PUBLIC FINANCE DURING THE REPUBLICAN PERIOD<sup>1</sup>

With the advent of the Republic earnest efforts were made to adopt a budget system, which, of course, could be put into operation only through the centralization of China's finance—both the income and the expenditure. But owing to the semi-independent status of the provinces through whose revolt the Manchus were overthrown, the financing of the new Government was dependent upon loans rather than provincial revenues. When Mr. Tang Shao-yi framed a budget early in 1912, he found a deficit of \$250,000,000.<sup>2</sup>

<sup>1</sup> Article by Yang Ju-mei in the *People's Voice* (*Min Ming*, a Chinese magazine), Vol. III, Nos. 3 and 4 combined, pp. 118-128. See also the article "Chinese National Budgets" in the *Chinese Economic Journal*, Vol. I, No. 6, June, 1927, pp. 511-526 and the chapter on "The Public Finances" in Condliffe's, *China To-day Economic*, pp. 111-143.

<sup>2</sup> Wagel: op. cit., pp. 58 and 350.



The budget of 1913, as revised by the House of Representatives, showed a deficit of \$85,205,640, the income being \$557,031,236 and the outgo \$642,236,876. Under the strong rule of Yuan Shih-kai the Central Government was able to exercise an adequate control over the finances of the provinces and therefore a budget was brought into existence for the year 1914. Although the estimates showed a surplus (an income of \$382,501,188 and an outgo of \$357,024,030), the budget itself lacked legislative approval. There was no budget to speak of for the year 1915. The Government simply spent what was actually paid into the treasury. The budget of 1916, approved by the Council of State, the legislative organ of Yuan Shih-kai, consisted of an income of \$472,000,000 and an expenditure of \$471,000,000. After 1917 China's financial embarrassment became extraordinarily acute. Not only did the maintenance of two political machines representing the northern and southern governments mean more expenditure but continuous civil war upset the country's finance. The budget of 1917 presented a deficit of \$110,000,000. No budget was compiled for 1918. Though approved by the new Parliament, the budget for 1919 with an income of \$640,000,000 was not put into force. Between 1919 and 1924 no budget was ever compiled. It was not until 1925 that a budget was drawn up under the auspices of the financial commission in Peking with \$460,000,000 as its income and \$630,000,000 as its expenditure. Like the budget of 1914 however, it was not ratified by the proper authority.

Under the Nationalist Government in Canton (created in July, 1925) a budget commission was organized to take charge of all political and military disbursements. After the seat of the Government was transferred to Nanking in April, 1927, it was replaced by a financial supervisory committee. At about the same time that the "five-power" government was put into

operation (Oct. 1928) a budget commission was instituted, which, however, was soon renamed financial commission. In 1930, the financial commission was abolished, and the ultimate power to determine the budget was shifted to the Central Political Council. As matters stand to-day, the work of compiling the budget is entrusted to the Comptroller-General's Office (Budget Office), which was created in April, 1931, while that of determining the financial policies (such as the apportionment of the aggregate of public expenditures to various lines of public service) is assigned to the Central Political Council.

### CHINA'S INDEBTEDNESS

Prior to China's intercourse with the western states public borrowing was scarcely known to the Chinese. That this was so was mainly due to the limited activities of the Imperial Government, the small amount of military expenditure, the system of accumulated reserves and the theory that government expenditure should not exceed government income.<sup>1</sup> Things took a radical turn, however, when the foreign powers came to knock at the doors of the Dragon Empire and forced their opening. Obstinate as the Manchus were, they accepted the challenge. Wars immediately ensued, the result of which was the imposition on China of huge indemnities. In order to meet this unanticipated financial obligation and at the same time to inaugurate certain reforms for which the country was clamorous, the Chinese Government resorted to the practice of floating loans, both domestic and foreign.<sup>2</sup> No less than twelve foreign loans were contracted before the Sino-Japanese War of 1894-5, totaling \$50,000,000 (Chinese currency) and bearing interest of from 5 to 8 per cent.<sup>3</sup> On two occasions domestic loans were also

<sup>1</sup> Huang: Public Debt in China, pp. 13-14 footnote No. 1.

<sup>2</sup> For China's foreign loans, see Wagel, op. cit., pp. 22-81.

<sup>3</sup> Chia: China's Finances, "The Public Debt," Vol. III, pp. 4-5 (in Chinese).

attempted: the Trust Loan of 1898, and the Patriotic Loan of 1911. But both of them failed of complete realization because of the lack of an efficient administrative system to operate such loans, the lack of confidence in the government on the part of the people and the absence of a money market.<sup>1</sup>

The failure of the two domestic loans and the conclusion of twelve foreign loans before 1894 seemed to indicate that borrowing abroad was much to be preferred. On the other hand, the acquisition of privileges, economic and political, by the money lenders, made foreign loans not merely undesirable but positively objectionable. So far as the foreign powers were concerned, their competition for preferential rights in loans was, at one time, both keen and serious. It was only when they came to realize the baneful consequences of international cut-throat competition that they formed the International Consortium,<sup>2</sup> aiming to avoid conflict of interests and to secure international coöperation. Unfortunately however, the Consortium, both old and new, has not accomplished much. Moreover, the imposition of conditions on China, under which money is to be borrowed and used, may lead to international control of her finance as well as her national policies. As a consequence, the Consortium as a financial agency has not won the support of the Chinese.

The establishment of the Republic in 1912 did not bring about a better order. Instead national indebtedness seems to have risen by leaps and bounds. It is true that many of the loans are secured on the revenues of the maritime and native customs, the salt—a semi-government monopoly, and other sources, but some have no security whatsoever. Foreign loans of the first category amount to \$742,335,807, while

<sup>1</sup> Huang: *op. cit.*, p. 15.

<sup>2</sup> For the old and new International Consortium see Bau, *Foreign Relations of China*, pp. 62-67 and 405-415.

domestic ones amount to \$566,860,387 (up to 1930).<sup>1</sup> Foreign and domestic loans of the second category aggregate about \$800,000,000.<sup>2</sup> It is important to remark here that the Boxer indemnities of \$554,592,966 are not included in the list of foreign loans. Neither are the debts incurred by the Ministry of Communications, which up to 1916 make a total of \$649,326,387.<sup>3</sup> A combination of all the debts of China—domestic and foreign, with and without securities, the Boxer indemnities and the debts of the Ministry of Communications, makes an aggregate of \$3,313,115,547. (The Kemmerer Commission estimated China's total debt at \$3,028,477,000. See *China Year Book 1929-30*, p. 657 footnote.)

### THE BUDGETARY SYSTEM

Viewed in the light of the national debts of the western countries China's debt of three and a half billion dollars is insignificant. But if one should take into consideration the elaborate industrial, agricultural, educational and political program which is yet to be undertaken, China's financial difficulties may be immediately realized. Moreover, since the establishment of the Republic no budget system has been in actual operation. Loans, mainly foreign, have oftentimes been floated without legislative sanction. Public funds have been exhausted by civil wars, most of which were fought by militarists and were contrary to the interests of the people. As a result, governmental finance has almost gone to the point of bankruptcy. One of the most urgent needs of China at present is, therefore, to put into operation at once a budget system, so that a genuine democratic government may be brought into existence. For as Professor

<sup>1</sup> Chia: op. cit., Vol. I, p. 9.

<sup>2</sup> Ibid., p. 10.

<sup>3</sup> Ibid., Vol. IV, pp. 5-6.

Adams says, "Constitutionalism is the idea; budgets are the means by which that idea is realized."<sup>1</sup>

(a) *Budget Rules and Budget Law*

The Budget Rules, promulgated on November 2, 1931, consist of four chapters, eleven sections and sixty-four articles. The first section is one of general principles. It stipulates that the fiscal year shall begin the first of July and end on the thirtieth of the following June, and that the budget shall comprise two groups of estimates, the national and the local.

The second section deals with the compilation of the budget, which involves three steps. The estimated income and expenditure of all individual government offices and their branch offices constitutes the first estimates or "estimates of the first grade." A combination of the first estimates, which have been classified in items by the various offices of the central government, the provincial governments, and the municipal governments under the Executive Yuan, makes up the second estimates. The third estimates compiled by the Budget Office of the National Government, comprise all the second estimates.

The third section is on the estimates. Revenues, which are to be estimated in accordance with special conditions, are to be classified in groups. Revenues include (1) taxes on production and consumption such as salt, tobacco and wine taxes, (2) import and export duties, (3) revenues from fixed taxes—taxes on land and houses, (4) taxes on transactions such as the stamp tax, (5) revenues from business taxes, (6) revenues from cultivated lands of various kinds and public properties, (7) revenues from administration, such as registration, inspection, fines and fees of various kinds, (8) revenues from productive enterprises and business undertaken by the government. The main

<sup>1</sup> Adams: *The Science of Finance*, p. 116.

items of expenditure are (1) salaries, (2) government purchases, (3) travelling expenses, (4) expenditures based on law, ordinances and contracts.

The fourth section deals with the date and procedure of compilation. The first estimates must be compiled before November 30 previous to the commencement of the fiscal year, the second estimates before January 15, and the third estimates before March 15. Before the last mentioned date the Budget Office must present its general estimates to the Central Political Council (through the National Government), to be accompanied by detailed explanations. In case of a deficit, it must also offer methods of remedy. It is the business of the Council to accept or modify the estimates of income and expenditure, which must be sent back to the Budget Office (through the National Government) before April 15. The Budget Office will then frame a budget bill based on the decisions of the Central Political Council, which is to be introduced to the Legislative Yuan by the Executive Yuan before May 15. In the following month the Legislative Yuan will pass the budget bill and recommend it to the National Government (before June 15) for promulgation.

The fifth section is on emergency funds. Both the first and second estimates may include emergency funds of from one to two per cent of the total estimated expenditure.

The sixth section is with reference to the execution of the budget. Revenues must be fully collected save in cases where important reasons can be shown or a vital change of circumstances has taken place. No alterations may be made in the rate of taxes unless otherwise provided by law. Neither may expenditures go beyond the appropriations. On the other hand, reduction or elimination of certain items in the budget may be made even after its promulgation, if the Central Political Council approves. Provision is also made for supplementary credits or deficiency bills for expenses

growing out of contract or law. In case of extraordinarily important undertakings administrative appropriations may be made, which, however, must be confirmed both by the Central Political Council and the Legislative Yuan.

The seventh section provides for measures to be observed before the adoption of the budget. In case the general estimates of an old government office or of an old undertaking have not been approved when the fiscal year begins, the most recent appropriations for such office or undertaking may be followed. If there are no such appropriations available as a basis, the necessary expenditures may be proposed by the government office concerned, which will then be presented to the Budget Office for consideration. With recommendations the Budget Office will bring the proposed expenditures to the Central Political Council for final approval. The expenditures for a new government office or for a necessary undertaking not budgeted may also be requested. Upon the recommendation of the Budget Office the Central Political Council may either grant or refuse the request. Extraordinarily urgent expenditures may be appropriated by the State Council upon the recommendation of the Budget Office. But they must be confirmed by the Central Political Council.

The last four sections concern the local budgets—the budgets of the provinces and municipalities, their compilation, execution, emergency funds and remedies before the adoption of the budget. In general the procedure is similar to that of the national budget.

Hardly had the Budget Rules been enforced than a new Budget Law was promulgated on September 24, 1932. In substance it is much more elaborate than the Budget Rules; in essence it is but slightly different. As of old, the budget is to be initiated by the different grades of government offices and compiled by the Budget Office. The approval of the Central Political

Council is necessary before the budget is referred to the Legislative Yuan for final action. On the other hand, the Budget Law comprises many other things on which the Budget Rules were silent. First, the new Budget Law makes provision for annual expenditure, continuing expenditure, and permanent expenditure (art. 5). Second, it also classifies government funds as regular, sinking, and reserve (art. 18). Third, in addition to items of income of expenditure, the budget is to consist the following: (1) statement of purposes, (2) statement of plans, (3) financial policies, (4) the financial situation in the past and at present, (5) points of difference between the budget of the previous fiscal year and that of the current fiscal year, (6) statement of plans for and conditions of national property, (7) statement of plans for and conditions of government business, (8) statement of plans for and conditions of government bonds, (9) other important matters (art. 40). Fourth, under any one of the following conditions, the supplementary budget system may be used, that is, additional appropriations may be requested: (1) when, owing to unavoidable obstacles, a government office is unable to work out its estimates at the prescribed time; (2) when a government office undertakes new responsibilities thrust upon it by law; (3) when, in accordance with law, new offices are created; (4) when there is a vital change of conditions; (5) when items of expenditure of the previous year are transferred to the current fiscal year (art. 72). Fifth, the extraordinary budget system may be put into use when national defence, or great catastrophe, or urgent construction work calls for extra funds. Extraordinary expenditure is to be drawn from the reserve fund (art. 76). The extraordinary budget is to be executed in accordance with special rules (art. 77). ㊦

In the matter of date, the new Budget Law differs from the Budget Rules. In July the Budget Office sends out its circular to different grades of government



offices asking them to figure out the necessary expenses for the fiscal year beginning July next (art. 29). The estimates from the varying grades of government offices must be handed over to the Budget Office before November 1st, which in turn must lay the general estimates of the nation before the Central Political Council before December 15 (art. 34). The compilation of the budget by the Budget Office must be completed before March 1st of the following year (art. 41). Between March 1st and 15th the budget is in the Executive Yuan which, however, can propose no increase except with the approval of the Central Political Council (art. 42). By April 1st the budget reaches the Legislative Yuan in the form of a bill (art. 43). A period of two months is allotted to this body for the consideration of the budget bill and before May 31st the bill must be presented to the National Government for promulgation (art. 47). Even in case of failure to approve some of the items in the budget, the Legislative Yuan is required to present a provisional budget to the National Government for promulgation before June 5 (art. 48). The provisional budget, which is somewhat similar to the Consolidated Fund Bill in England, has the same effect as a budget. It works until the items of the proposed budget are duly approved by the Legislative Yuan.

(b) *The Comptroller-General's Office or  
Budget Office (Chu-chi-chu)*<sup>1</sup>

The compilation of the Chinese budget by an independent Budget Office rather than by the Ministry

<sup>1</sup> The term "comptroller-general's office" as used in the *China Year Book 1931-32* for the Chu-chi-chu is confusing in that the primary function of the Chu-chi-chu is the compiling of the budget, not the auditing of accounts. The function of the English Comptroller and Auditor-General and the American Comptroller-General is the auditing of accounts. The auditing function in China is performed by the Board of Audit, which is attached to the Control Yuan. For the purpose of clearness the writer adopts the English term Budget Office for the Chu-Chi-Chu.

of Finance or its agency marks a department from the practice in other countries. There are four reasons why this new scheme may prove to be advantageous. First, the creation of the Budget Office, which is free from any interference, may secure the independence of the work of the General Director of the Budget and elevate his position. Second, the Budget Office, because of its independence, may compile the budget in accordance with the actual needs of the country instead of merely dividing the spoils, as was formerly the case with the Ministry of Finance. Third, since the Budget Office is directly responsible to the National Government and is independent of any Yuan, it may unify the budgetary estimates of all government offices. Fourth, instead of bothering itself with the drudgery of preparing estimates of income and outgo, the Ministry of Finance may devote itself to the work of tax, currency, and public debt reform which is of the utmost urgency in China.

As now constituted, the Budget Office consists of a Bureau of Statistics, a Budget Bureau, and an Accounting Bureau, all under the direction of the General Director of the Budget, who is assisted by six directors.

### (c) *The Auditing Board*

The Auditing Board is an office attached to the Control Yuan. It consists of a president and a vice-president, from 9 to 12 auditors, from 12 to 16 assistant auditors, and from 9 to 10 inspectors, who may not be removed from office unless they have been deprived of their civil rights by the decision of judicial courts or have been subject to the punishment of the Commission for the Disciplinary Punishment of Officials. Its function is to audit the accounts of all government offices, to supervise the execution of their budgets, to determine all cases of delinquency in financial matters such as irregularities, misuse of

power, negligence of duty, and illegal conduct. Since the Control Yuan is vested with independent supervisory powers—impeaching and auditing, the Auditing Board is a control agency with quasi-judicial duties very similar to the German Court of Audit or *Rechnungshof*.<sup>1</sup> On the other hand, it differs from the Office of the Comptroller and Auditor-General in England, which is essentially a legislative organ, and from the General Accounting Office in the United States which is an agency of the Congress.<sup>2</sup>

In structure and operation, the Auditing Board is characterized by three features. First, its control is final, final in the sense that it does not have to make reports to the Legislative Yuan. Second, since the Control Yuan is an independent government machine, its Auditing Board exercises independent auditing functions, not subject to the scrutiny of any other political body. Third, in view of the presence of inspectors, the work of examination and supervision of the conduct of financial officers may be more efficient.

#### *(d) Features of the Chinese Budget System*

The budget system in China, viewed as a whole, shows four characteristics. First, instead of being initiated by the Ministry of Finance, the Chinese budget is framed by an independent Budget Office. This, it is to be noted, differs from the practice in England (by the Chancellor of the Exchequer), France, Germany (by the Ministers of Finance), and the United States (by the President and the Budget Director), where the principle of executive (cabinet)

<sup>1</sup> Blachly and Oatman: *Government and Administration of Germany*, pp. 244, 247, 251.

<sup>2</sup> Willoughby: *The Legal Status and Functions of the General Accounting Office of the National Government*, pp. 12-16.

Willoughby, Willoughby and Lindsay: *The System of Financial Administration of Great Britain*, pp. 216-217.

initiation is maintained.<sup>1</sup> (The budget bill must, however, be passed by the Executive Yuan before it goes to the Legislative Yuan.)<sup>2</sup> In spite of the advantages that characterize the Chinese system, the fact that the executive is responsible for the efficient administration of government activities and knows best the administrative needs of the country, cannot be denied. For the Budget Office, which is neither an organ of the Ministry of Finance nor of any administrative department, to compile the budget is, therefore, hardly conducive to the best interests of the country. Moreover, the division of responsibilities—that of providing revenues and that of compiling estimates of expenditure, between the Ministry of Finance and the Budget Office would cause a great deal of difficulty in securing a balanced budget.

The second feature of the Chinese budget system is the determination of financial policies by the Central Political Council. As the supreme organ of the nation during the period of political tutelage, the Council has now the final authority in financial matters—taxation, currency, revenue and expenditure, etc. Of course, when the constitutional period commences, the Council is to be superseded by the National Congress of the people, and its financial powers will be shifted to the National Congress or its Central Executive Committee.

Thirdly, final legislative approval, which is required in almost all countries, is a mere formality in China, at least at the present time. In order to make the Legislative Yuan a responsible organ, it is certainly desirable that its financial powers, especially the power to adopt the budget, should be augmented.

<sup>1</sup> Munro: *Governments of Europe*, pp. 222–232, 477–482.

Munro: *Government of the United States*, pp. 368–374.

Ogg: *English Government and Politics*, pp. 429–441.

Blachly and Oatman: *op. cit.*, pp. 225, 227, 255.

<sup>2</sup> Art. 24 of the revised Law governing the organization of the National Government, Dec., 1931.

Lastly, there is the independent Auditing Board vested with supervisory powers. That the auditing function should be exercised by an independent organ rather than by an agency of the legislature is an essential feature of the five-power system, and this is wise in view of the mass of business with which the legislatures of modern states are confronted.

### THE MINISTRY OF FINANCE

As an agency responsible for the administration of the nation's finances, the Ministry of Finance deserves a word. Like the treasury or similar institutions in other countries, it has an elaborate organization and now includes the Customs Administration, the Salt Administration, the Department of General Affairs, the Department of Taxation, the Department of Currency, the Department of Public Loans, the Department of Treasury, the Department of Accounting, and the Tax Administration which includes the former Consolidated Tax Administration and the Stamp Tax, Tobacco and Wine Division. Prior to 1928 the Maritime Customs service was a distinctively "denationalized administration" under the name of Shui-wu-ch'u. Hart, Lay, Aglen, Edwardes and Maze had served successively as Inspector General. In the summer of 1928, however, the Customs Administration became an integral part of the ministry of Finance, and Maze took his oath of office as a Chinese official. In view of the substantial increase in its revenue since the recovery of tariff autonomy, the Customs Administration is rated as one of the most important branches of financial administration.

The work of the Ministry as a whole, though extensive, falls under four categories—the collection of revenue; the custody of public funds and the paying of all government bills; the supervision of currency, including the regulation of coinage, the issue of paper

money, the supervision of speculative, insurance, and savings business; and the issue of bonds. Since the Minister of Finance may attend the meeting of the Legislative Yuan, he is given a measure of initiative in financial legislation. On the other hand, much of his work is shared by the Finance Commission and the Economic Commission respectively, and the formulation of important financial policies is subject to the control of the Central Political Council.

### SOURCES OF REVENUE AND ITEMS OF EXPENDITURE

In 1928 the National Government set up a standard in accordance with which revenues are to be classified as national and local.<sup>1</sup> To the former group belong the following taxes and revenues: salt taxes, customs duties, taxes on tobacco and wine, stamp tax, taxes on rolled tobacco, transportation tax, all kinds of special taxes, consumption taxes, taxes on coastwise fishing, mining, exchanges, income, inheritance, and registration, revenues from national properties and national administration (such as judicial fines, licence fees, etc.), revenues from the provinces and municipalities, which by law should be handed over to the National Government, and revenues from business undertaken by the Government (railways, telegraphic and postal services, navigation, fishing and mining, factories and banks). Local revenues include taxes on land, registration of title deeds, business, pawnshops, butcheries, inland navigation and inland fishing, houses, house and land taxes in prosperous municipalities, revenues from properties and enterprises owned and operated by the local Government, revenues from local administration, and subsidies from the National Government.

<sup>1</sup> Wei: *The Finance of China To-day*, pp. 1-8 (in Chinese).

A similar attempt was made to discriminate expenditures which are national from those which are local.<sup>1</sup> National expenditures embrace expenses for the Party, the civil establishments—the State Council, the five Yuan, the Auditing Board, the Board of Personnel, the Finance Commission, etc., the military establishments—the National Defense Conference, the Directorate-General of Military Training, Department of Military Affairs (under the direct jurisdiction of the National Government), Department of the Navy, arsenal, military schools, military hospitals, and military prisons, etc.; expenses for domestic purposes—Ministry of the Interior, Commission on Mongolian and Tibetan Affairs, Opium-Prohibition Commission, relief commission, police bureau in the national capital; expenses for the diplomatic service; financial expenses; expenses for educational, cultural, judicial, agricultural and mining, industrial and commercial, communication, public health, and reconstruction purposes; expenses growing out of public debts; subsidies to the provinces and municipalities and other organizations; and expenses for business undertaken by the National Government. Expenses for the provinces and municipalities embody those for the Party, the local administration, judicial purposes, public safety, financial affairs, educational and cultural enterprises, mining and agriculture, industry and commerce, communication, public health, reconstruction, debt service, contributions to the National Government or other provinces and municipalities, and business undertaken by the local Government.

It was on the basis of these lists that the financial reports for the seventeenth and eighteenth fiscal years of the Republic were made by the Ministry of

<sup>1</sup> Wei: op. cit., pp. 90–98.

Finance.<sup>1</sup> The revenues of the 17th fiscal year comprise three main items:

1. Revenue including taxes (customs duties, salt, rolled tobacco and kerosene, tax collected by the Provinces, tobacco and wine, stamps, flour, parcel post, mining tax), miscellaneous revenue (examination of deeds, fines, sale of confiscated property, registration fees), unclassified revenue (national revenue collected by the Provinces and directly disbursed for military expenses), miscellaneous.
2. Refunds, including return of Russian indemnity, refunds of expenses and advances.
3. Bonds, Treasury Notes and Loans.

Disbursements include (1) current expenses for the various government organizations, both civil and military, (2) debt service, (3) indemnity, (4) advances for capital of Central Bank, (5) Suspense. The grand total of receipts as well as disbursements amounts to \$434,440,712.92. The amount of receipts and expenditures of the 18th fiscal year was \$539,005,919.15. As these two figures will show, the 18th fiscal year had incurred \$104,565,207 more of expense than the previous year. That amount was, however, balanced by the revenue from taxes, which presented a figure of \$488,063,208 in comparison with \$332,497,550, the amount of revenue from taxes of the previous year.

#### OTHER FINANCIAL AGENCIES

In addition to the Ministry of Finance, the Central Political Council, the Budget Office, and the Auditing

<sup>1</sup> For the two financial reports of the Ministry of Finance see *China Weekly Review*, Vol. LII, No. 2, March 8, 1930, pp. 52, 53, 76, and Vol. LVI, No. 3, March 21, 1931, pp. 81-86.

The 18th fiscal year report may also be found in *China Year Book 1931*, pp. 698-704, and *China Year Book 1931-32*, pp. 427-434. For the 19th and 20th fiscal year reports see *China Weekly Review*, Vol. LXIII, No. 5, Dec. 31, 1932, pp. 212-217.



Board, two other financial agencies, the Finance Commission and the Economic Commission, must be noted. The Finance Commission consists of from 35 to 45 commissioners, who are to be selected from the banking, industrial and commercial groups, experts and scholars, with the President of the Executive Yuan as its chairman. The functions of the Commission are to regulate finance, to examine the general estimates of all military and political expenditures, to investigate and approve the issue of bonds, to examine financial reports, and to check over and promulgate the amount of receipts and disbursements. The Commission holds its meetings every month, at which the Ministry of Finance makes its report of the financial transactions of the past month.

In order to facilitate the program of economic reconstruction, to secure the coöperation of all government agencies concerned, to work out a unified plan ensuing economy, and to enable the officers of the administrative departments which are economic in character to understand the current economic situation, an Economic Commission has been brought into existence. According to the regulations governing its organization (promulgated by the National Government on June 6, 1931), the Commission is to plan and consider all enterprises of economic reconstruction on the basis of the national economic and financial situation. In personnel, the Commission is composed of the President and Vice-President of the Executive Yuan, and the heads of the departments of the interior, finance, railways, communications, industry, and education, who are to serve as *ex officio* members, and not more than eleven other members to be elected by the *ex officio* members. Technical committees may be created for the performance of technical work. In jurisdiction, all work of economic reconstruction and the disbursements of all economic undertakings are subject to its examination. Like

the German Economic Council, it possesses the right to consider and approve all economic projects before they are actually carried out. In this way it acts as a sort of economic parliament, with powers, however, mostly of an advisory character. The Finance Commission is responsible to the Executive Yuan, but the Economic Commission is under the jurisdiction of the National Government.

The Central Bank, established in 1928, is the depository of the government funds, and is, therefore, an important fiscal agent.<sup>1</sup>

The distribution of work among many different institutions that of the determination of fundamental fiscal policies by the Central Political Council, that of the compilation of the budget by the Budget Office, that of the audit of accounts by the Auditing Board, that of the administration of the Nation's finances by the Ministry of Finance, that of the planning of economic reconstruction by the Economic Commission, that of making public the financial transactions by the Finance Commission, is certainly desirable in that it secures specialization. But, on the other hand, it may give rise to overlapping of work and conflict of jurisdiction. How to harmonize the working of these organizations without at the same time destroying their integrity seems to be a problem requiring immediate solution.

<sup>1</sup> For the Central Bank of China see *China Year Book 1929-30*, pp. 310-317, and also *China Year Book 1931*, p. 412.

The Central Bank has a paid-up capital of \$20,000,000 furnished entirely by the Government. It has four special rights: (1) to issue bank notes according to the "Law of Notes," (2) to mint and circulate the coins of the National currency, (3) to be in charge of the Government Treasury, (4) to float Government bonds and to take charge of the Government Loan service.

## CHAPTER XIV

### PARTY POLITICS

#### POLITICAL PARTIES AND REPRESENTATIVE GOVERNMENT

ON political parties Lord Bryce, the noted authority on modern democracies, has made the following remarks: "Parties are inevitable. No free large country has been without them. No one has shown how representative government could be worked without them. They bring order out of the chaos of a multitude of voters. . . . Party strife is a sort of education for those willing to receive instruction, and something soaks through even into the less interested or thoughtful electors. The parties keep a nation's mind alive, as the rise and fall of the sweeping tide freshens the water of long ocean inlets."<sup>1</sup>

This view of Lord Bryce is shared by Professor Munro who says: "Partyism and representative government are inseparable. . . . Free government without political parties may be practicable, but nowhere has the world yet found any enduring instance of it. . . . Political parties, by whatever name they may be known, should be regarded in the same light as parliaments, presidents, and courts—as integral factors in the mechanism of democratic government."<sup>2</sup>

President Lowell, the first modern writer to lay emphasis on the relation of political parties to the actual workings of government, considers the machinery

<sup>1</sup> Bryce: *Modern Democracies*, Vol. I, p. 119.

<sup>2</sup> Munro: *Governments of Europe*, 1925 edition, pp. 230-231.

of party and of government as "one and the same thing."<sup>1</sup>

In almost identical words, Professors Merriam and Gosnell speak of the party as "the near government or the actual government itself."<sup>2</sup>

That political parties are indispensable concomitants of popular government needs, therefore, but little elaboration. In cabinet-government countries such as England and France, cabinet ministers are at the same time members of the legislature. (In England, cabinet ministers as well as other ministers are required to have seats in either the House of Lords or the House of Commons.) So long as the ministry retains the confidence and support of the majority party in the legislature, it remains in office. In case it should lose its support, it may either resign or dissolve the legislature. Under such conditions, the party performs an important function. It not only links up the two institutions but also gives the executive that support which is necessary for the execution of its policies.

In the United States, where the presidential system is in operation, the role played by political parties is even more important. This is so because of the independence of the executive from the legislature and the fact that the two chambers of the legislature are of coordinate powers. It is quite possible that without the link-up of political parties the executive and the legislature or the two chambers of the legislature may come to a deadlock. This actually took place during the second administration of President Wilson.

In countries where governmental affairs are controlled by a single party without an opposition, as in Russia and Italy, and also in China at present, the supremacy of the party is unchallenged. For the Communist Party, the Fascist Party and the Nationalist Party are not only the sole policy-framing

<sup>1</sup> Lowell: Government of England, Vol. I, p. 458.

<sup>2</sup> Merriam and Gosnell: The American Party System, p. 59.

organs but the very foundation on which the governments in these respective countries are constructed.

### POLITICAL ASSOCIATIONS BEFORE 1911<sup>1</sup>

Though political associations could be found before the Revolution of 1911, no political parties in the modern sense actually existed in China.<sup>2</sup> That this was the case was mainly due to the form of government and the traditional conception of *tang* or party. Under the old regime liberty of speech was unknown, in spite of the rather vague right of petitioning; and the supreme authority of the state was vested in the Emperor. Political parties to serve as organs of public opinion and to bring into actuality the things that they stand for could not, therefore, find a place. Moreover, parties were commonly viewed as factions selfish in motive and tricky in methods. The ancient saying "chün tse ching erh pu tang" meaning that a gentleman does not care to join any party though he may associate with others, was virtually considered as a political creed.

Far back in the days of the Emperor Hsun Tsung of the Sung Dynasty (960-1127),<sup>2</sup> however, political formations, somewhat akin to modern political parties were in existence. Wang An-shih, scholar and statesman, was the leader of the New Law or Reform Party. While prime minister, he issued many new laws aiming at the preservation of peace and the amelioration of the financial situation of the country. Against his policy of reform was the Old Law or Conservative Party.

During the Ming Dynasty (1368-1644) there was the Tunglintang (East Forest Party) founded by

<sup>1</sup> Lynn: Political Parties in China, pp. 16-22.

<sup>2</sup> "A political party," according to Professor Ray, "is a durable organization of individuals, or groups of individuals, fluctuating in personnel and members, united by common principles or a common policy, and having for its immediate end the control of the government through the carrying of elections and the possession of office." Ray: An Introduction to Political Parties and Practical Politics, p. 7.

Ku Hsien-chen. Its primary purpose was to defeat the Party in support of a favorite concubine, Chen Kwei-fei, of the Emperor Kwan Tsung, who usurped the royal authority.

When the Manchus were in power (1644-1911) secret societies of various kinds were organized. The Pailienchiao (White Lily Sect) outwardly using the slogan, "Uphold the Manchus and eliminate all foreigners," was in reality concerned with the overthrow of the Manchus and the restoration of the Mings to power.

The Taiping Tienkuo (Pacific Kingdom) was founded for the same purpose. For thirteen years the Taiping "rebels" were in control of more than half of the Chinese provinces.

The Party formed by K'ang Yu-wei, the constitutional reformer, was first known as the Modernization Party and later the Constitutionalist Party. Both K'ang and his disciple Liang Chi-ch'ao advocated a constitutional monarchy of the English type. Their schemes of reform were, however, disapproved by the Empress Dowager, and they themselves narrowly escaped death.

The Hsinchunghui, the forerunner of the present Nationalist Party (Kuomintang) was founded by Dr. Sun Yat-sen in 1893. It was a revolutionary society, aiming at the overthrow of the Manchus and the establishment of a republic. While all these formations had political motives, none of them possessed the features of modern political parties.

## DEVELOPMENT OF POLITICAL PARTIES SINCE 1911

### (a) *The Progressive Party (Chinputang)*<sup>1</sup>

It was only after the establishment of the Republic that political parties similar to those in western countries

<sup>1</sup> Lynn: op. cit., pp. 23-25.

Hornbeck: Contemporary Politics in the Far East, pp. 77-78.

began to be organized. The first to be mentioned is the Progressive Party, which was the result of a coalition of the Republican Party (Kunghotang), the Unification Party (T'ungyitang) and the Democratic Party (Minchutang), formed in May 1913 with Li Yuan-hung as its director and Wu Ting-fang, Liang Chi-ch'ao and Chang Chien as its leaders. The Republican Party was a union of three political groups—the Unification Republican Party (T'ungyi-Kunghotang), the People's Party (Minshetang) and the Citizen's Coöperation Society (Kuominhshiehhu). It was formally organized in September, 1912, and its policy was to establish a strong centralized government. The Unification Party was founded by Chang Ping-lin in March, 1912 as a result of his difference of opinion with Dr. Sun Yat-sen and Huang Hsing whom he discredited. The Democratic Party was organized by scholars and men hitherto known as constitutionalists in the early part of 1912. Its original name was the Society for studying the establishing of a republic. The adoption of the policy of centralization or the institution of a strong centralized government was its platform.

In spite of the complexity of its membership, the Progressive Party has been an important factor in Chinese politics. During the opening years of the Republic, as it will be recalled, the executive and the legislature were dominated by two different political parties. Yuan Shih-kai, representing the Northern Military Party, headed the executive; while the Nationalist Party or Kuomintang dominated both chambers of the National Assembly. In order to institute a strong opposition to the Nationalist Party in the legislature and to have himself elected President of the Republic, Yuan, the Provisional Chief Executive, and the Progressive Party came to an understanding which, to the satisfaction of both, resulted in the election of Yuan as President of the Republic and

the appointment of several members of the Party to important governmental posts. But Yuan did not believe in popular government, and his attitude towards the Party could not, therefore, be sincere. So long as he was in need of it, he gave it support and favors. After he was seated in the Presidential chair he neglected it. In January 1914 he even resorted to the extreme measure of dissolving the Parliament, after having removed a number of the Kuomintang members from it in the previous year, on a charge of conspiracy in violation of the Provisional Constitution. On the other hand, he gave cabinet positions to Liang Hsi-ch'ao, Hsiung Hsi-ling and Tong Hua-lung, leaders of the Progressive Party, in appreciation of their cooperation in his struggle with the Nationalist Party.

In spite of this, ill-feeling between Yuan and the Party could not but grow. In 1915, when Yuan restored the monarchy with himself as Emperor, the Party severed its relation with the "Emperor-President." General Tsai Ao, a supporter of the Progressive Party, directed an individual campaign in Szechuan against the monarchical movement. It is said that even the veteran Kuomintang General Lie-chun joined hands with him.

The death of Yuan in June 1916 not only brought the monarchical movement to an end but also restored the Old Parliament. Strange to say, on the day of the reconconvocation of the Old Parliament (August 1st), the Progressive Party was dissolved by its leaders. The dissolution, as its political rivals declared, was a masterpiece of intrigue, intended to get rid of its undesirable elements and to break off all connection with Yuan Shih-kai, and his unpopular attempt at monarchical restoration. In other words, in order to win back the confidence of the people and to become active again in politics, the leaders sacrificed the existence of the Party.



(b) *The Constitution Studying Association—  
Yenchiu Clique*<sup>1</sup>

The dissolution of the Progressive Party did not mean the retirement of all its leading members from politics. Instead, Liang Chi-ch'ao, Tong Hua-lung, Lin Chang-min and others in the reconvened Parliament organized the Constitution Studying Association to which the majority of the members of the Progressive Party lent their support. As of old, therefore, two political parties were contesting for power in the Parliament, the Nationalist Party and the Yenchiu Clique. The former supported President Li Yuan-hung and the latter sided with Tuan Chi-jui, the Premier, whose political views were widely different from those of the President. It was under such conditions that the question of declaring war against Germany came to the fore. President Li and the members of the Nationalist Party opposed China's participation in the War, while Premier Tuan and Liang Chi-ch'ao strongly advocated China's fighting on the side of the allied Powers. As the Yenchiu Clique only constituted a minority in the Parliament, its failure in this issue could be predicted. What else could be done under such circumstances than to dissolve the Kuomintang Parliament! Hard pressed by the militaristic followers of the Premier, President Li issued the fatal mandate of June 13, 1917, dissolving the Parliament.

In the new Parliament of 1918 the Yenchiu Clique only secured thirty seats. Its lack of a definite policy and of organizations outside of Peking counted much for its decline if not extinction.

(c) *The Anfu Party*<sup>2</sup>

Growing out of a social club in Anfu Hutung (alley) formed in August, 1917, the Anfu Clique was the most

<sup>1</sup> Lynn: op. cit., pp. 26-30.

<sup>2</sup> Ibid., pp. 95-120.

powerful political party in China from 1918 to 1920. During that short period it directed the policy of the nation and was the center of Chinese politics. Though Tuan Chi-jui, the founder of the Party, failed to secure the premiership under President Hsu Shih-chang, still he commanded the respect of the northern militarists. Moreover, the Party had a substantial majority in the Parliament and several seats in the cabinet. What was more, its leaders never took into consideration the welfare of the people but were concerned with the grasping of important governmental positions. Tuan was an honest man himself, but he became the tool of his associates, whose intrigues caused several civil wars.

In the summer of 1918, when Tuan was making preparations for a new Parliament in order to elect a new President in the following autumn, Hsu Shu-tseng, the real leader of the Party, made a gift of one and a half a million dollars to the Party. Encouraged by this donation, Wang Yi-tang and Tseng Yu-chun immediately drafted a platform advocating the unification of the country, continuation of the Republican Government, proclamation of a constitution and the general welfare of the people. Branch associations were established in different places under fancy names, and votes were purchased with the result that 387 seats were secured in the Parliament.<sup>1</sup>

The first thing that this new legislature was to do was to elect a new President.<sup>2</sup> While Tuan Chi-jui figured prominently in the election, Feng Kuo-chang, the Acting President, was not willing to give up his office without a struggle. What was more, Tuan and Feng represented two different military factions. The election of the one or the other would involve

<sup>1</sup> It was said that more than seven million dollars were spent by the Party in the purchase of votes.

<sup>2</sup> According to arts. 28 and 29 of the Provisional Constitution the President was to be elected by the Parliament.

serious consequences. In order to avoid a possible clash of arms Hsu Shih-chang, once the teacher of Tuan and Feng, was chosen. Amid great pomp this aged President assumed office on October 10, 1918. To the great surprise of the Anfuites, he did not play the role of a puppet as they had expected. For instead of appointing Tuan premier, he asked Chien Nun-hsun to form a cabinet, which included, however, a few Anfu men. In the meantime, Tuan was appointed Director-General of the Frontier Defense Army, and Hsu Shu-tseng was put at the head of the Northwestern Army.

But the Anfu Party was unpopular from the very beginning of its existence. The Parliament in which it had a majority was denounced as illegal, not only because of its wholesale bribery in the election, but also because it was not elected in accordance with the Constitution of 1912. China's failure in the Paris Peace Conference was another point of attack. It was Tuan who favored war against Germany, and naturally he was held responsible for the Shantung clause in the Versailles Treaty, by which Japan fell heir to all German rights in Shantung.

Then Tsao Kun and Wu Pei-fu of the Chihli Party threw down the gauntlet to the Anfu leaders, and war broke out in the summer of 1920. The defeat of the haughty Anfu army was a death blow to the Party. Not only was the Anfu Parliament dissolved, but the Anfu leaders were also put under arrest.

Although eliminated from the political arena, those Anfu leaders never lived in quietness. It was their habit to fish in troubled waters. For the two Fengtien-Chihli wars (1922 and 1924) they were responsible. After the defeat of the Chihli Party in the second Fengtien-Chihli war in 1924 Tuan was made Provisional Chief Executive. Once more the Anfuites came into prominence, and as of old, they seized every good position they could, forgetting the interests of the

nation. When General Feng Yu-hsiang, whose *coup d'état* brought the downfall of Wu Pei-fu, discovered that he had played into the hands of the Anfuites, he rose against Tuan, who fled to the Legation Street in April, 1926.

Tuan is living in retirement now, devoting himself to the study of Buddhism. He has his adherents, it is true, but their activities are in suspension. As a political party, the Anfu Clique completely failed to win the support of the people. Without a definite policy to serve the nation there was no reason why it should be popular.

(d) *The Chihli Party*<sup>1</sup>

Just as Anfu was the name of an alley in Peking so was Chihli the name of a province. To-day the Chihli Party is down, and coincidentally the province of Chihli is renamed Hopei.

The Chihli Party owed its existence to Yuan Shih-kai, the founder of the Peiyang Military School, the West Point of China. Of this military academy General Wang Shih-chen, President Feng Kuo-chang, Marshall Tuan Chi-jui and President Tsao Kun were some of the early graduates. It was they who supported Yuan in his negotiations with the South in 1912, helped him in the Presidential election the next year and suppressed the Revolution of 1913. As all these prominent men except Tuan hailed from the province of Chihli, the group they formed was designated, at a later time, as the Chihli Party. Yuan did not intend to form a political party, it is true. But the Chihli Party grew up naturally on account of his patronage.

After the death of Yuan his followers split into two parties. Tuan led the Anhwei faction, later known as the Anfu Party. Wang Shih-chen, Feng Kuo-chang

<sup>1</sup> Lynn: op. cit., pp. 121-158.

and Tsao Kun formed the Chihli Party. In point of seniority as well as popularity, Wang Shih-chen could have easily secured the leadership. But he was a good-natured man and not in the least ambitious. This left Feng Kuo-chang as undisputed leader of the Party. By holding a strategic position as Tu-chun (military governor) of Kiangsu, he first secured the vice-presidency and later the presidency upon Li Yuan-hung's retirement in 1917. "Ignorant of politics" and "devoid of patriotism" Feng did not prove equal to the task. As soon as he stepped into the Hsinhua Palace, he did everything he could to enrich himself. It was said that he even sold all the fish in the "Three Seas" when he yielded the presidential chair to Hsu Shih-chang in 1918. While the Party was disgraced by Feng's corrupt administration, it was during his days that its foundation was laid. This was brought about by the coöperation of the military governors in the lower Yangtse and of other northern commanders and the expansion of the power of Tsao Kun, military governor of Chihli.

In 1920 the Party burst into prominence through its victory over the Anfu Party, much to the credit of the scholar-soldier, Wu Pei-fu. Wu was born in a family of poor scholars in Shantung, fifty eight years ago. Being a patriot, he was greatly shocked by China's defeat in the 1894-5 war with Japan. His main interest was, therefore, in the defense of his country. This led him to enter the Peiyang Military School, despite the fact that he had already received the A.B. degree in a governmental examination. After graduation with honors, he joined the army. But for nearly ten years he worked in obscurity, first under Wang Shih-chen and then under Tsao Kun. It was not until Chang Hsun's monarchical *coup* in 1917 that he distinguished himself in battle. Then the southerners suffered reverses at his hands. Three years later the Anfu army suffered the same fate.

In making a challenge to the Anfu Party in 1920, Wu was, of course, utilized by President Hsu Shih-chang, who got tired of the Anfu domination. But the elimination of the Anfu leaders from politics left the Chihli Party in undisputed supremacy.

Two years after the Anfu-Chihli war Wu beat the Mukden troops led by the Manchurian War Lord, Chang Tso-lin. But in 1924 it was his turn to suffer a defeat, due solely to the *coup d'état* of Feng Yu-hsiang and Hu Ching-yi. Between the two Fengtien-Chihli wars, however, Tsao Kun, the leader of the Chihli Party launched a presidential campaign, which resulted in his election through bribery as President of the Republic in October, 1923, to the great resentment of the Anfu and Fengtien leaders. Tsao was simple-minded and pleasure-loving. It was no wonder, therefore, that his regime lasted only thirteen months and thirteen days. His resignation in the winter of 1924 as a result of his being taken prisoner by Feng Yu-hsiang, made room for his rival, Tuan Chi-jui, who assumed the title of Provisional Chief Executive.

The defeat of Wu did not, in any way, improve the political situation. Instead of coöperating, Chang Tso-lin and Feng Yu-hsiang, the victors of the day, fought for the control of Peking, while Tuan sat innocent as a child.

In the spring of 1926 Feng and Chang broke their friendly relations, and fierce battles were fought in the vicinity of Nankou. In June Wu and Chang, who had so terribly fought against each other before, formed an alliance, and coöperated in their campaign against Feng Yu-hsiang.

It was when Wu and Chang were in hot pursuit of Feng's troops that the northern expedition was inaugurated by the Nationalist Government in Canton. But the Chihli leader who was the first to meet the

Nationalist troops was doomed to failure. Sun Chuan-fang in control of the lower Yangtse provinces, tried to play a double game of friendship to both Wu and the Nationalists, hoping to see both of them destroyed. Surprised at Wu's rapid disintegration, Sun went to his rescue in August. But it was too late. He in turn was beaten and had to flee to Tientsin for assistance.

The fate of the Chihli Party hinged on its true leader, Wu Pei-fu. His defeat meant the downfall of the Party. Conservative Wu might be, but no one could question his honesty and patriotism. His plan for a national people's convention to solve China's political problems was one of the things which Dr. Sun Yat-sen advocated.

(e) *The Fengtien or Mukden Party*<sup>1</sup>

The history of the Fengtien or Mukden Party centers on Chang Tsö-lin, the founder, who, up to his death in June, 1928, directed the activities of that Party. Chang was born in a poor family in Fengtien fifty-six years ago. Without the care of his father, who died while he was a mere lad, he was left to work out his own destiny in the wilderness of Manchuria. It was while he was pursuing his lawful occupation as a trapper and hunter in that vast region, as he intimated in his speech about two months before his death, that he was forced to join a group of bandits. But he was not of the type of common highway robber. His determined effort to rob the rich in order to help the poor earned for him a reputation like that of the English Robin Hood. At the close of the Russo-Japanese War he had as many as 10,000 men under him. Taken into governmental service by Viceroy Chao Erh-hsun, first as a battalion commander, he was promoted to be a brigade commander during the

<sup>1</sup> Lynn: op. cit., pp. 159-223. Fengtien has been renamed Liaoning. Mukden or Shenyang, is the capital city of the province of Liaoning.

Revolution of 1911. Soon after the election of Yuan Shih-kai as President of the Republic he became commander of the 27th division. In 1915, when Yuan was launching his movement for a monarchical restoration, Chang seized the military-governorship of Fengtien.

But rapid as was its growth, the Party was very unpopular, owing to the fact that Chang acted as an ardent supporter of Premier Tuan Chi-jui under President Li Yuan-hung and was a member of the notorious Tu-chun (militarist) group.

The strength of the Party was first displayed by its participation in the Anfu-Chihli war of 1920. Chang fought on the side of the Chihli Party because the Anfu Parliament promised to elect the Chihli man, Tsao Kun, instead of himself to be the vice-president, though Tsao was never elected to that post.

In April 1922 when Wu Pei-fu of the Chihli Party objected to Chang's nomination of Liang Shih-yi as Premier, the first Fengtien-Chihli war broke out. Of course, Hsu Shu-tseng's intrigues had much to do with it.

The crushing defeat of the Fengtien army was immediately followed by its thorough-going reorganization. Between 1922 and 1924 Chang became a willing tool of any one who gave him hope of revenge. It is true that Chang won the victory in 1924. But the absence of a constructive program after the war gave the Anfuites another opportunity to foment intrigues. The retirement of Tuan Chi-jui as Provisional Chief Executive in April 1926 was accompanied by hostilities between Chang Tso-lin and Feng Yu-hsiang, resulting in the defeat of the latter.

In the fall of 1926 Sun Chuan-fang, the dictator of the Southeast, who, a year before drove the Fengtien troops away from Kiangsu and was now hard pressed by the Nationalists, suddenly appeared in Tientsin. Upon his persuasion, the Ankuochun or Country Pacification Army was formed in opposition to the



Nationalist Army, with Chang Tso-lin as commander-in-chief and Sun Chuan-fang and Chang Tsung-chang as his deputies. Chang assumed office in December, 1926.

While the Nationalist troops were advancing northward in the summer of 1927, Sun and Chang, beaten by the Nationalists, arrived in Peking. It was their intention to obtain more funds to carry on their campaigns. Being a shrewd politician as well as a good soldier, Sun presented his plans of meeting the situation. At last Chang Tso-lin agreed to form a military government in the North with himself as generalissimo. On June 18, 1927 he assumed office. As a reward for their "support" Sun Chuan-fang and Chang Tsung-chang were given a million dollars. But they could not check the advance of the Nationalist troops. One city after another was lost to them. In the meantime, Yen Hsi-shan threw in his lot with the Nationalists and participated in the so-called northern expedition. On May 30, 1928, Chang Tso-lin ordered a general withdrawal of his troops on all fronts. On June 2nd he left for Mukden. At 4 o'clock in the morning of June 4th, when he was taking a cup of tea from the servant, his car was mysteriously bombed and he and several others met their tragic death.

Under the leadership of Chang Hsueh-liang, son of the old Marshall the Party has a bright future. But the sudden invasion of Manchuria by Japanese troops in September, 1931, which ruthlessly devastated that region, practically destroyed the strength of the Party.

### THE KUOMINTANG OR NATIONALIST PARTY<sup>1</sup>

The one party which deserves special mention is

<sup>1</sup> Chen, S. H.: *The Kuomintang of China in the Past Thirty Five Years* (in Chinese).

Lynn: *op. cit.*, pp. 31-94.

*The Rise of the Kuomintang: A Survey of Government in China Since 1911.*

*Foreign Policy Association, Vol. IV, No. 8, June 22, 1928.*

the Kuomintang or Nationalist Party. Not only is it well organized but it has also worked out a definite policy which is being put into practice. Since the completion of the northern expedition in 1928 it has been considered the only legal party in China. Furthermore, during the period of political tutelage, 1930-1935 inclusive, it is to act for the people in the exercise of their political rights.

(A) *Dr. Sun Yat-sen*<sup>1</sup>

In order to understand the history of the Kuomintang, it is necessary, first of all, to study the life of Dr. Sun Yat-sen, the leader of the Party. Dr. Sun was born in 1866 in Hsiangshan (now Chungshan) district, Kwangtung. At the age of eleven he went to Honolulu to stay with his brother, where he continued his residence until he was eighteen. It was there that he received the Christian influence which led to his baptism in 1883. In 1885 he graduated from Queen's College, and seven years after he completed his work in Hongkong Medical College. In the following year he organized the Hsinchunghui, a revolutionary society. The failure of his attempt at revolution in 1895 necessitated his seeking refuge in Honolulu. In 1896 he left for America whence he sailed to England. While he was in London, he was kidnapped by the agents of the Imperial Government and confined in the Chinese Legation for twelve days. But through the effort of his teacher, James Cantlie, and the timely intervention of the British Foreign Office, he was released.

In spite of many difficulties he kept on preaching the gospel of revolution, even at the risk of his life. After his travels in Europe and America he organized

<sup>1</sup> Dr. Sun Yat-sen, *His Life and Achievements*, published by the Publicity Department of the Central Executive Committee.

in 1905 the T'ungmênghui which was to continue the work of the Hsinchunghui. Between 1905 and 1911, the year in which the Chinese Revolution took place, revolutionary activities were numerous. But one failed after another in rapid succession. In December, 1911 he was called back from Europe to assume the Provisional Presidency, which he yielded to Yuan Shih-kai shortly after. Heading two different political parties and embracing different political views, Sun and Yuan could not coöperate. In 1913 Dr. Sun sent a punitive expedition against Yuan, which, however, resulted in failure. After the second dissolution of the Parliament in 1917, he went to Kwangtung, where he formed a military government. In 1921 he was elected President by the Parliament in Canton. Finding that the Nationalist Party was rather loose in its organization, he called the First National Congress of the Kuomintang in January, 1924. Resolutions dealing with the principles, policies and organization of the Party were adopted. The Party itself underwent a reorganization. Shortly afterwards he lectured on the *Three Principles of the People* and published the *Fundamentals of National Reconstruction*. In November, 1924 after the conclusion of the second Fengtien-Chihli war, he proceeded to the North to consider with Tuan Chi-jui, Chang Tso-lin and Feng Yu-hsiang questions of political reconstruction. He advocated the summoning of a National People's Convention, to be organized on a vocational basis. This, however, did not meet the approval of Tuan Chi-jui. In the meantime, he became so ill that he had to go to the Peking Union Medical College, where, in spite of the most careful medical treatment, he died on March 12, 1925. While his untimely death left his work undone, he has bequeathed us his teachings, which we are endeavoring to transform into actualities. Here was a patriot, who devoted his life to the work of the revolution, with

only one clear purpose in mind, namely, that of benefiting the teeming millions of the Chinese population.

(B) *The History of the Kuomintang or  
Nationalist Party*

(1) The Hsinchunghui or Society for the Regeneration of China, 1893-1905.

The history of the Kuomintang may be roughly divided into five periods. The first was that of the Hsinchunghui, Society for the Regeneration of China, dating from 1893 to 1905. Prior to the founding of that revolutionary society, the progenitor of the present Kuomintang, innumerable unilateral treaties had been imposed on China by the foreign powers. Embracing clauses regarding consular jurisdiction, conventional tariff, most-favored-nation treatment, inland and coastal navigation, the plying of foreign warships in Chinese waters, spheres of influence, etc., they impaired China's sovereignty and threatened her national existence. To overthrow the corrupt Manchu regime under which such treaties were concluded and to free China from such restrictions was, therefore, the aim of the Hsinchunghui. A manifesto was issued calling attention to the danger of partition and urging the Chinese to join in the enterprise of "regenerating China." Two revolutions were attempted, but both of them resulted in failure.

For the management and direction of the revolutionary activities, the Hsinchunghui had a simple organization, which consisted of a general manager and an assistant manager, a foreign and Chinese secretary, a treasurer and ten directors. Membership was not limited to nationals. Aside from the lectures delivered by Dr. Sun himself the "China Daily News" in Hongkong was the only organ for the propagation of the revolutionary gospel.

(2) The T'ungmênghui or Alliance Society, 1905-1912.

The period of the Hsinchunghui was a period of national degeneration. The Treaty of Shimonoseki in 1895, which terminated the Sino-Japanese War, not only imposed on China a heavy indemnity but also wrested from her Formosa and the Pescadores. The same period also witnessed the scramble for concessions—Germany in Kiaochow, Russia in the Liaotung Peninsula, France in Kwangchowwan and England in Weihaiwei. Outside of China the idea of revolution which found its expression in the independence of the Panama Republic, the Serbian Revolution and the Russian Revolution, was gaining momentum. Under such conditions revolutionary activities in China could not but be accelerated. In 1905 Dr. Sun convened four revolutionary conferences in Brussels, Berlin, Paris and Tokyo respectively. The result of these gatherings was the amalgamation of various revolutionary societies such as Kwangfuhui, Huahsinhui and Hsinchunghui into the T'ungmênghui. A platform was adopted advocating the overthrow of the Manchus, the establishment of a republic, the restoration of China for the Chinese, and the equalization of land-ownership. More than ten thousand persons joined the Society and pledged themselves for revolutionary work. In organization, the Society established its headquarters in Tokyo with branch offices scattered in different parts of the world.

The Society also issued a manifesto outlining the program of political reconstruction, which embodied three stages. During the first stage, efforts should be made to conquer all opposition to revolution and the country should be subject to military laws. During the second stage, the country should be ruled in accordance with a provisional constitution so as to

prepare for a constitutional government. The third stage was to be one of constitutional government, during which the affairs of the state should be conducted in accordance with a permanent constitution.

### (3) The Kuomintang or Nationalist Party, 1912-1914.

The Revolution of October 10, 1911 was the crystallization of the work of the T'ungmênghui, which in August 1912 under the leadership of Sung Chiao-jen united into itself other revolutionary organizations and became known as the Kuomintang or Nationalist Party. In the general election of 1912 it pulled a heavy vote and constituted the largest political party in the National Assembly which met in April, 1913. In addition to a platform which embraced five points: political unification, the promotion of local self-government, the assimilation of the lesser ethnic groups within the Chinese nationality, emphasis on the livelihood of the people and the maintenance of world peace, a manifesto was issued, which in substance was a mere reiteration of the platform. The adoption of the unitary form of government and of the responsible cabinet system, executive appointment of provincial administrative officers, an enumeration of the powers of the provinces, parliamentary election of the premier, improvement in military affairs, division of national and provincial powers of administration, development of natural resources, improvement of communication, promotion of local self-government and of education, judicial centralization and the promotion of international friendship and the adoption of a definite foreign policy are some of the things it advocated.

But China was not ready for parliamentary government. Sung Chiao-jen, who ignored the program of Dr. Sun, proved no match to Yuan Shih-kai. Not only did he fail in his parliamentary method of acquiring

political power but he was assassinated by the agents of his political rival. As far as Dr. Sun was concerned, he refrained from taking an active part in parliamentary affairs, though he led another revolution in 1913 against Yuan Shih-kai.

(4) The Chunghua Komingtang or China Revolutionary Party, 1914-1919.

Finding himself deserted and his principles ignored, Dr. Sun gathered around himself a few true elements of the T'ungmênghui and organized the China Revolutionary Party in Tokyo in July, 1914, in order that the revolutionary forces of the country might be consolidated. This was necessary, especially after the dissolution of the Kuomintang organization and the National Assembly by Yuan Shih-kai. In 1916 the Party raised the standard of revolt against Yuan's monarchical restoration. In the following year it vehemently protested against the illegal dissolution of the Parliament by President Li Yuan-hung. An extraordinary session of the old Parliament was held in Kwangtung in September of the same year and Dr. Sun was elected Commander-in-Chief. A military government was soon organized which after one year's existence, was succeeded by an administrative directorate of seven members with Tsen Chun-hsuan as chairman.

An elaborate party constitution was adopted which provided for three stages (military, tutorial and constitutional) with a view to the eventual realization of constitutional government. It also made provision for five departments: that of general affairs, that of party affairs, that of finance, that of military affairs and that of political affairs. For the preparation of a five-power government, four yuan, in addition to the Party as an executive yuan, were instituted: the legislative yuan, the judicial yuan, the control yuan and the examination yuan.

(5) Chunghua Kuomintang or the Nationalist Party of China since 1920.<sup>1</sup>

This period of the Kuomintang was marked by a complete break of the South from the Peking Government. The domination of the Anfu Party in the North, the failure of the Shanghai Peace Conference to attempt political unification, the dictatorial regime of the Chihli Party and the bribery election of Tsao Kun made it clear that nothing but a genuine revolution could save China. In April, 1921 Dr. Sun was elected President of the Constitutional Government by the old Parliament sitting in an extraordinary session at Canton. Two years later the Party adopted a manifesto elucidating the *Three Principles of the People*. In the First National Congress of the Party held in Canton, January, 1924, the *Three Principles of the People* were given an elaborate explanation, a platform outlining the domestic and foreign policies of the Party was adopted, and the Party was organized on the pattern of the Russian Communist Party. In July of the following year the Nationalist Government was established in Canton with Mr. Wang Ching-wei as chairman despite the death of Dr. Sun Yat-sen in March. The northern expedition which was inaugurated in July, 1926, under the leadership of General Chiang Kai-shek after two years of hard fighting was brought to a successful consummation in the capture of Peking. In 1927 the Party was hopelessly divided with the result that a new Government was set up at Nanking in opposition to the one at Hankow which was dominated by the radicals. A "purifying movement" soon followed intended to punish and expel the Communistic elements of the Kuomintang. In

<sup>1</sup> Though the term Kuomintang was used in the manifesto of the Kuomintang adopted in January, 1924, it is generally agreed that the China Revolutionary Party must have resumed the old name Kuomintang at an earlier date. It is to be noted that in the revised constitution of the Kuomintang (Nov. 1920), the term Kuomintang was used.



spite of the convocation of the National People's Convention and the adoption of the Provisional Constitution in May, 1931, the Nanking Government headed by General Chiang Kai-shek has not been immune from attack. From the institution of the "five-power" government in October, 1928 to the Japanese invasion of Manchuria in September, 1931, many instances of internal warfare occurred. Such civil strife, which has ruined China economically and politically, cannot but be viewed as meaningless and selfish. Unless the militarists lay down their arms permanently, and unless the politicians cease to foment intrigues, little hope can be entertained that the process of national disintegration will ever come to an end. Revolution in China has not been accomplished, and it can be accomplished only through a change of hearts, not through words or slogans.

### (C) ' *Principles of the Party*

The principles of the Party are the principles of nationalism, popular sovereignty, and the livelihood of the people, commonly known as the *Three Principles of the People* formulated by Dr. Sun Yat-sen. Closely akin to Lincoln's formula of a government of the people, by the people and for the people, and to the French revolutionary doctrine of liberty, equality, and fraternity, these principles are, in the words of Dr. Sun, the principles of national salvation. In essence, the principle of nationalism seeks to liberate China from the grip of unilateral treaties and all other forms of imperialistic encroachment, and to make equal all the races within Chinese territory, so that internationally China may be made a free and independent nation and internally there may be national unity. The principle of popular sovereignty endeavors to accord to the people the rights of initiative, referendum and recall in addition to election. The principle of the

livelihood of the people advocates the equalization of land and the regulation of capital. According to it, the State shall enact a land law, a law for the utilization of land, a land expropriation law and a land tax law. All land shall be taxed according to the value declared by the owners and may be purchased by the Government at that valuation. Industries which are either monopolistic in character or beyond the capacity of private individuals to develop, such as banking, railways, and navigation, shall be undertaken by the State, so that private capital may not control the economic life of the people. The State shall also promote the interests of the farmers and laborers in such ways as the establishment of rural banks, the support of the aged and the young, the relief of the sick and disabled, the irrigation and development of waste land, the care of the unemployed, etc.

#### *(D) Program of the Party<sup>1</sup>*

In the manifesto of the First National Congress of the Party, held in January, 1924, the following was adopted as the platform of the Party:

##### **A. EXTERNAL POLICY**

"1. All unequal treaties, such as those providing for leased territories, extraterritorial privileges, foreign control of the customs tariff, and exercise of political authority on Chinese territory which impair the sovereignty of the Chinese nation, should be abolished, and new treaties concluded on the basis of absolute equality and mutual respect for sovereign rights.

"2. All countries that are willing to abandon their special privileges in China and to abolish their treaties which impair Chinese sovereignty should be accorded most-favored-nation treatment.

"3. All other treaties between China and the foreign Powers which are in any way prejudicial to the interests of China should be revised according to the principle of non-infringement of each other's sovereignty.

<sup>1</sup> Tysau: *Two Years of Nationalist China*, pp. 29-33.

"4. The payments due on the Boxer indemnity should be entirely devoted to educational purposes.

"5. As long as they do not impair China's political interests, the foreign loans made by China should be properly secured and repaid.

"6. Foreign loans contracted by irresponsible Governments in China, such as the Peking regime, founded on bribery and usurpation, were used, not to promote the welfare of the people, but to maintain the existence of the militarists or to further their policy of bribery and stealing. The people of China should not hold themselves responsible for such debts.

"7. A conference consisting of delegates from the social and commercial organizations, such as banks, Chambers of Commerce, and educational institutions, should be called to devise ways and means for the repayment of foreign loans, in order to free China from the semi-colonial status arising from the economic bondage.

#### "B. INTERNAL POLICY

"1. The principle of equilibrium should be observed in the division of powers between the central and local governments. Matters that require a standard of uniformity for the whole nation should be allotted to the Central Government. Those that are particular to a locality and need particular attention should be allotted to local governments. The division should over-emphasize neither centralization nor decentralization.

"2. The people of each province may draw up their own constitution and elect their own governor. The provincial constitutions should not conflict with the national constitution. The provincial governors should supervise the workings of local autonomy within their jurisdiction and administer affairs of state under the direction of the Central Government.

"3. The hsien, or district, should be the unit of local self-government. The people of every self-government hsien should have the rights of electing and recalling their own officials, as well as the rights of initiative and referendum in making laws.

"Land tax, tax on increment of land value, the products of public lands, and all profits derived from the forests, rivers, and mines should be placed at the disposal of the local governments, for developing local enterprises, relieving the poor and the aged, supporting orphans, carrying out famine relief, and maintaining public health as well as similar public enterprises.

"The development of natural resources and the operation of big industries beyond the power of the local governments should be undertaken by the State. The profits from such undertakings should be equally divided between the State and the local governments.

"In regard to the expenses of the State, each hsien should remit to the National Treasury a certain percentage of its income. Such percentage should not be less than ten per cent or more than fifty per cent of its total receipts.

"4. Universal suffrage should be carried out. Class suffrage based on property qualification should be abolished.

"5. Competitive examinations should be established to supply the deficiency of the electoral systems.

"6. The people's rights to freedom of assembly, of forming associations, of speech, of publication, of choice of domicile and liberty of conscience, should be established by law.

"7. A system of conscription should be put into force to replace the present mercenary troops. At the same time, special attention should be given to the economic welfare of the soldiers and the lower officers as well as the advancement of their legal status. In the armies, industrial and agricultural education should be given. The qualifications for officers should be strictly defined, and the method of promoting and dismissing officers should be reformed.

"8. The legal rates for land tax should be strictly determined. All extra taxes, such as likin, etc., should be abolished.

"9. A census of the population should be taken, cultivated lands should be redelimited, while the production as well as consumption of food supply should be investigated so that the people may not be in want.

"10. The organization of rural communities should be improved so as to ameliorate the living conditions of the agricultural population.

"11. Labor laws should be enacted, labor conditions should be improved, labor organizations should be protected and promoted.

"12. Legal, economic, educational and social equality between the sexes should be recognized, and the developments of women's rights should be encouraged.

"13. Energetic efforts should be made for universal education, and every effort should be made to develop education based on the interests of the children. The educational system should be revised, and educational expenditure should be increased and its independence guaranteed.

"14. The State should determine the laws governing lands, the use thereof, their expropriation, and tax on land values. Lands owned by private individuals should be assessed and reported to the Government by the landlord. The owners of private land should declare its value to the Government; the Government should levy tax according to the declared value, and, in case of necessity, may purchase it at the price so declared.

"15. Enterprises which partake of the nature of monopolies, or which cannot be well undertaken by private individuals, like

railways and steamship lines, should be owned and managed by the State.

"The above items represent the minimum measures in our Party platform, to be first undertaken for the salvation of our country."

### *(E) Organization of the Party*

The structure of the Party, which is determined by the Party Constitution adopted at the First National Congress in 1924 and revised at the Second National Congress in 1926 and the Third National Congress in 1929, bears a close resemblance to that of the Russian Communist Party. The principle of organization has been, therefore, characteristically described as one of democratic centralization. At the apex is the National Congress in which is vested the supreme authority of the Party. The Congress elects the Central Executive and Supervisory Committees, which exercise the functions of the Congress when it is not in session. The Central Executive and Supervisory Committees in turn elect their own Standing Committees to handle the routine administration when they are not in session.

In the provinces the Provincial Party Convention constitutes the highest authority, which elects the Provincial Executive and Supervisory Committees. Like the Central Executive and Supervisory Committees the Provincial Executive and Supervisory Committees choose their own Standing Committees to attend to the routine work when they themselves are not in session. The Party Conventions in the Special Municipalities are organized on the same basis as the Provincial Party Conventions and are under the direct control and supervision of the central Party authorities.

In the districts (hsien) the District Party Convention is at the top, and elects the District Executive and Supervisory Committees. The latter choose from their own group one member to perform the daily routine when they are not in session. Each district

is divided into sub-districts in which there are Sub-District Party Conventions. As is the case with the higher institutions, the Sub-District Party Conventions elect their own Standing Committees. Each sub-district is further divided into cells or locals, the basic units of the Party (to be abolished in accordance with the decision of the First Plenary Session of the Central Executive and Supervisory Committees of the Fourth National Congress of the Kuomintang in December, 1931), each of which contains at least five members. It is through this hierarchy of institutions, each responsible to the one above it, that the principles of the Party are propagated to the general public. For the army and navy and the overseas Chinese, Party organizations of various grades have also been brought into existence.

The National Congress meets once every two years. A special meeting must be convened, however, if the Central Executive Committee should deem it necessary or if more than one half of the Provincial Party Conventions and other Party Conventions of the same grade should so petition. Under special conditions the National Congress may be postponed. But in no case can the postponement exceed one year. The National Congress is vested with the following powers: (1) to adopt and enforce the reports of the Central Executive Committee and of the National Government, (2) to revise the platform and the constitution of the Party, (3) to formulate new policies and new programs for the National Government to meet new situations, (4) to elect members of the Central Executive and Supervisory Committees.

The Central Executive and Supervisory Committees hold their plenary sessions at least once every six months, and are charged with the following duties:

(A) Central Executive Committee: (1) to represent the Party in external relations, (2) to enforce the resolutions of the National Congress, (3) to organize and

direct Party conventions in different places, (4) to organize the central Party organs, (5) to fix Party contributions and finances.

(B) Central Supervisory Committee: (1) to decide on the punishment of members violating the Party discipline, (2) to audit the accounts of the Central Executive Committee, (3) to review the progress of Party affairs and to instruct and direct the subordinate Party Conventions in the matter of auditing the accounts and of investigating the Party work, (4) to see whether or not the policies and work of the National Government are in accordance with the policies of the Party.

Both the Central Executive Committee and the Supervisory Committee have a Standing Committee consisting of five persons (in the case of the Central Executive Committee from five to nine persons). In addition, the Central Executive Committee is assisted by the following committees: finance committee, drafting committee, overseas Chinese committee, committee on the Party History Compilation, organization committee, publicity committee, committee for the direction of mass movement, secretariat, bureau of statistics. (Prior to the First Plenary Session of the Fourth National Congress of the Kuomintang, December, 1931, the organization and publicity committees were termed departments. There was no committee for the direction of mass movement but a training department.)

The work of the Provincial, District and Sub-District Party Conventions, as well as their Executive and Supervisory Committees, is of a similar character except that its scope is more limited.

#### *(F) The Party and the Government*

As has been mentioned previously, the relation between the Party and the Government is regulated

by six principles, which were adopted by the Standing Committee of the Central Executive Committee of the Kuomintang in October, 1928 and confirmed by the Third National Congress of the Kuomintang in March, 1929. In essence, these principles provide that during the period of political tutelage and until the convocation of the National Congress of the People, the National Congress of the Kuomintang shall act for the people in the exercise of their political rights; that when the National Congress is not in session, the Central Executive Committee shall exercise its functions; that the exercise of executive, legislative, judicial, examination and control powers shall be entrusted to the National Government; that the Central Political Council of the Central Executive Committee shall direct and control the National Government in the performance of its duties; that the people shall be taught to exercise the rights of suffrage, initiative, referendum and recall; and that the Organic Law of the National Government of the Republic of China may be amended and elucidated by resolution of the Central Political Council of the Central Executive Committee.<sup>1</sup>

The relation is further defined by the Third National Congress of the Kuomintang in the following words: "The Central Political Council of the Central Executive Committee of the Kuomintang, in determining the fundamental policies of the period of political tutelage and in guiding the National Government,\* shall be responsible to the Central Executive Committee of the Kuomintang. The National Government, in executing the political tutelage program and policies, shall be responsible to the Central Political Council of the Central Executive Committee of the Kuomintang."<sup>2</sup> In other words, between the Party and the Government

<sup>1</sup> The Manifesto and Resolutions of the Third National Congress of the Kuomintang, p. 44 (in Chinese).

<sup>2</sup> Tyau: op. cit., p. 35.



stands the Central Political Council which serves as a connecting link. (It is to be noted, however, that according to the decision of the First Plenary Session of the Central Executive and Supervisory Committees of the Fourth National Congress of the Kuomintang the Central Political Council is to be composed solely of members of the Central Executive Committee of the Party.) Though peculiarly intimate is the relation of the Kuomintang to the Government, the Party, in the words of Wang Ching-wei, is neither purely "an organ to supervise the Government" nor a "super-Government."<sup>1</sup>

The supremacy of the Party during the period of political tutelage is now unquestionable. But the Party has not been altogether free from criticism. In the manifesto to the members of the Party, the Fourth Plenary Session of the Central Executive Committee of the Kuomintang in November, 1931 has made the following remark: •

"After a thorough examination of the past work of the various Party headquarters and our comrades, we have discovered, to our deep regret, serious blunders which are absolutely inconsistent with and run counter to the ideals for which the Party stands. While some of these blunders are attributable to defects in the system of Party administration, the majority of them are to be ascribed to the shortcomings of the individual Party members.

"... The following are the three principal blunders which all comrades must resolutely set themselves to amend and correct.

"(1) Misconception of the Party: Not having personally experienced the great hardships which the Party had to undergo in past years and unaware of the immense mission of national reconstruction which the Party has still to carry out in the future, many of

<sup>1</sup> Hsin Wan Pao, a leading Chinese newspaper, Nov. 1, 1931, p. 4.

our comrades have fallaciously regarded the Party as the source of their personal livelihood.

"It should be realized that what a Party member may legitimately expect from the Party is nothing more than the opportunity to strive for the Party principles, and only when all our comrades are working unselfishly for the Party can its strength be consolidated. Comrades are expected to provide for and sustain the existence of the Party. It is not for the Party to provide a source of income for its members.

"(2) Misconception of the Party headquarters: Some of our Party members have often regarded the Party headquarters in a given locality as a rival organ of the local government. The people, on the other hand, have also come to regard the Party headquarters and the local government as "yamen" (governmental office) of the same grade. Such a fallacious attitude has given rise to grievous results.

"Party headquarters should hereafter concentrate their efforts upon fostering the strength of the masses and promoting the welfare of society so that the platform and policies of the Party may be realized.

"(3) Mistaken attitude towards the people: It is deplorable that some of the Party members should allow themselves to act improperly in speech and conduct towards the people. Some of them have even gone to the length of utilizing the masses as tools. All these blunders arise out of the fact that our comrades do not, as they ought to, regard themselves as the 'public servants' of the people. . . ."<sup>1</sup>

Confronted with serious problems both internal and external as the Chinese nation is at present, it is earnestly hoped that the Kuomintang will undertake the work of national salvation. Since it has so energetically declared its mission to be the salvation of the country, and since it is directing the policies of

<sup>1</sup> *China Weekly Review*, Vol. LIV, No. 13, Nov. 29, 1930, pp. 462-463.

the National Government, it will not be too much to expect from the Party that firstly, it should wholeheartedly devote itself to the work of the *Three Principles of the People*. To be more specific, it should endeavor to emancipate China from her unilateral treaties, to educate the unenlightened multitude, to direct the mass movement, and to mitigate the sufferings of the Chinese population by developing the economic resources of the country. Secondly, the Party members should play the game of coöperation instead of splitting themselves into different factions, for no nation that divides against itself can stand. Thirdly, constituting only a minor portion of the Chinese population, the members of the Party, in spite of their supreme position during the period of political tutelage, should respect the opinion of the majority, who are not members.

In view of the elaborate program to be carried into effect by the Party, patriotic citizens of China should love and support it. On the part of the Party, it should put the interests of the nation above its own.

## CHAPTER XV

### LOCAL AND TERRITORIAL GOVERNMENT

#### LOCAL SELF-GOVERNMENT UNDER THE FIVE-POWER CONSTITUTIONAL SYSTEM

LOCAL self-government is the foundation of national democracy. Through the practice of it the people acquire their political experiences and build up their political habits. "It creates among the citizens" says Lord Bryce, "a sense of their common interest in community affairs, and of their individual as well as common duty to take care that those affairs are efficiently and honestly administered."<sup>1</sup> "Local institutions," continues the same authority, "trains men not only to work for others but also to work effectively with others. They develop common sense, reasonableness, judgement, sociability."<sup>2</sup> Goodnow remarks that "a pretty wide participation of the people in local government is necessary to the successful operation of constitutional government."<sup>3</sup> Alexis de Tocqueville voices the same sentiment when he says, "local institutions constitute the strength of free nations."<sup>4</sup> Munro signalizes local institutions by speaking of them as "an integral part of the common life."<sup>5</sup> The place of local self-government in China is particularly significant. It is significant in that the completion

<sup>1</sup> Bryce: *Modern Democracies*, Vol. I, p. 132.

<sup>2</sup> *Ibid.*

<sup>3</sup> Goodnow: *Principles of Constitutional Government*, p. 314.

<sup>4</sup> Munro: *Governments of Europe*, quotation from Alexis de Tocqueville, p. 551.

<sup>5</sup> *Ibid.*

of the program of self-government in the districts is a necessary and preliminary step towards the realization of a constitutional government. Thus says Dr. Sun in his *Fundamentals of National Reconstruction*, "when more than half of the provinces in the country have reached the Constitutional Government stage, that is, more than half of the provinces have local self-governments fully established in all the districts, there shall be a National Congress to decide on the adoption and promulgation of the Constitution."<sup>1</sup> As to the program of local self-government, Dr. Sun summarizes in this fashion:

"During the period of political tutelage the government should despatch trained officers who have passed the examinations to the different districts to assist the people in making preparations for local self-government. The attainment of local self-government depends on the completion of the census, the survey of the district, the organization of an efficient police force, and the construction of roads throughout the district. Moreover, the people of the district must be able to fulfil their duties as citizens by exercising the four rights mentioned above (initiative, referendum, recall and election), and must pledge themselves to carry out the principles of the revolution, before they are entitled to elect the officer of a hsien for the administration of its affairs and representatives of the hsien for the formulation of its laws. By that time, the hsien will be considered as fully self-government."<sup>2</sup>

"At the beginning of self-government it is imperative that a declaration be made of the value of private-owned land of the district, the procedure being to require the owners to make their own declaration at the local administration so that the tax will be imposed according to the declared value, but the local government is entitled at any time to purchase the property at the declared value. . . ."<sup>3</sup>

"The annual revenue from land, the increase in land value, the production from public land, the income from forestry, rivers, mines, and waterfalls, shall be reserved for the local government and shall be devoted to the development of industries, the taking care of the young, aged and poor, the relief of public calamities, the care of the sick, and other public needs."<sup>4</sup>

<sup>1</sup> *Fundamentals of National Reconstruction*, art. 23.

<sup>2</sup> *Ibid.*, art. 8.

<sup>3</sup> *Ibid.*, art. 10.

<sup>4</sup> *Ibid.*, art. 11.

For the completion of such a program a time limit has now been set up, namely, from 1930 to 1935. Within these six years, it is to be noted, the revenue from the districts will be devoted to local needs and the people will be trained in the exercise of their political rights. If more than half of the provinces are capable of self-government at the expiration of the sixth year, that is, 1935 a constitution will be promulgated and the political rights of the people, which are being exercised by the Party, will be given back to them, the legal sovereign, so to speak.

### THE STATUS OF THE PROVINCES

As has been mentioned previously, the provinces of the old China, particularly the territorial units (erroneously designated as "states") of the Chou Dynasty (1122-255 B.C.) were nothing less than semi-independent states.<sup>1</sup> They waged war on their own behalf, appointed and received envoys, formulated rules of war and of peace and conducted their relations with one another as if they were members of an international community. True there was a central government, but its authority hardly went beyond the national capital and its vicinity. In those days when communication was difficult and feudalism was in full swing, it could scarcely be expected that these so-called "states" should render their allegiance to the central government.

Though the provinces were intended to be mere territorial division under the Manchu regime (1644-1911), to carry out the orders of the central government, the provincial governors or viceroys were quite free in the shaping of provincial policies and the determination of provincial affairs. It is largely due to this reason that E. H. Parker speaks of China as a

<sup>1</sup> See Chapter I, footnote No. 1, p. 5. Note that the territorial units of the Chou Dynasty were erroneously designated as "states."

"confederation of homogeneous provinces . . . each of which is sufficient unto itself, and exists as an independent unit."<sup>1</sup> As the circuits, prefectures and districts in the province were under the direct control of the provincial government rather than of the government at Peking (now Peiping), and the intendants, prefects and magistrates were, in fact, responsible to the governor or viceroy, the provinces determined, to a very large extent, the fate of national politics.

A fundamental change was effected in the structure of the national government in 1912 it is true, but no radical change was introduced into the provincial system. Under the despotic rule of the militarists, whose independent spirit often set the wishes of the national government at defiance, the province constituted an *imperium in imperio*. The prolonged civil wars which cover a large part of the Republican history offer an adequate explanation of this situation.

In order to do away with this "remnant of feudalism" Dr. Sun Yat-sen proposed that the province should serve as a connecting link between the nation and the districts.<sup>2</sup> In other words, instead of acting as the directing authority, it should be the agent of the central government, supervising the activities of the district governments. The position of the province under the "five-power" system will, therefore, be quite different from what it has been before. On the other hand, the districts, the units of local self-government, will be given a prominent place.

### QUESTION OF PROVINCIAL RECONSTRUCTION

This view of Dr. Sun finds expression in a resolution adopted by the Fourth Plenary Session of the Central

<sup>1</sup> Parker: *China, Her History, Diplomacy and Commerce*, p. 161.

<sup>2</sup> Art. 18 of the *Fundamentals of National Reconstruction* runs as follows: "The hsien is the unit of self-government. The province links up and provides means of coöperation between the central government and the local governments of the districts."

Executive Committee and the Supervisory Committee of the Third National Congress of the Nationalist Party held in November 1930. The resolution initiated by Wu Chao-chu, former Chinese Minister at Washington and Chen Min-chu, former chairman of the Kwangtung provincial government, centers on the idea that the provinces now in existence in China numbering twenty eight in all are too large in size and that practical reasons necessitate that they be made smaller. The arguments advanced are that their large size has rendered it difficult for the central government to exercise its control, that it has also made it possible for the militarists to perpetuate their despotic regime in the provinces, and that in view of the elaborate program of local self-government in the districts which is to be completed within six years, the provinces, if not reconstructed, may not fulfil this requirement.

From the standpoint of history and practical politics much may be said for provincial reconstruction. First, it may terminate the militaristic regime which has characterized provincial politics ever since the founding of the Republic. Second, by elevating the position of the districts, it may hasten the accomplishment of local self-government. Third, it may encourage the people in the districts to participate and to be interested in local politics so that they may eventually be fitted to handle national affairs. Fourth, the district government, by reason of its increased powers and its knowledge of local conditions, may best perform its work.

On the other hand, it has also its demerits. First, the creation of more provinces would strengthen the idea of provincialism, which is already conspicuous in China. Second, it is uneconomical, no matter how simple the provincial governmental machinery is. Third, the scheme, which involves a diminution of the powers of the provincial government, would



necessarily mean more work for the central government. However objectionable provincial reorganization may seem to be, it affords an excellent opportunity for China to reconstruct her provinces on economic lines so as to facilitate the development of the productive forces of the country.

### THE PRESENT SYSTEM OF PROVINCIAL GOVERNMENT<sup>1</sup>

The separation of the provinces from Peiping, the old capital, as has been remarked, constitutes an important reason of China's national disunity. That the relation between the national government and the provincial governments should be intimate and close is, therefore, too evident to require explanation. The provinces as now organized,<sup>2</sup> being primarily to facilitate the administration of governmental affairs and to link up the nation and the districts, are under the strict control of the central government at Nanking. Each has a commission of from seven to nine members, all appointed by the National Government, who constitute a sort of governmental council (though such a council is not mentioned in the text of the Revised Law governing the organization of provincial governments) and one of whom acts as chairman (art. 4). Matters relating to the following subjects are within the competence of the commission to determine (art. 5): ordinances and regulations regarding the administration of the entire province, the increase or reduction of the financial burdens of the people with the approval of the National Government (art. 2), the fixing and changing of local administrative areas, provincial budgets and financial

<sup>1</sup> Under the Revised Law of March 23, 1931.

<sup>2</sup> See the Revised Law of March 23, 1931 governing the organization of provincial government (in Chinese). But the Commission system will soon be discarded in the provinces. In January 1933 the Central Political Council approved in principle the system of single executive.

statements, provincial property and other public enterprises, matters delegated to it by the National Government, local self-government, provincial administration, the maintenance of peace and order, the appointment and removal of officers of the entire province, and other matters which in the opinion of the commission should be decided.

Below the commission are the secretariat and four bureaus: civil affairs, finance, reconstruction, and education (art. 8). The bureau of industry may be created if necessary. The secretariat is headed by a chief secretary and takes charge of miscellaneous duties concerning commission conferences and all affairs of importance, the drafting, receiving and sending out of documents, publication and statistical work, the recording of the appointment and dismissal of officers of the bureaus and the secretariat, and the custody of seals (art. 9). The bureau of civil affairs is entrusted with the following duties: the recommendation of the appointment and removal of the administrative officers of the districts and municipalities, local self-government and its funds, police and protection, sanitation, elections, famine relief and other social relief work, labor disputes, ceremonial and religious affairs, land survey, revenue and administration, and opium suppression (art. 10). The finance bureau has to do with provincial taxes and debts, budgets and accounts, the receiving and spending of funds, and public property (art. 11). The education bureau takes charge of different grades of schools and other cultural institutions, libraries, museums, and public athletic grounds, social education and educational administration (art. 12). The function of the reconstruction bureau relates to the construction of public roads and railroads, engineering work of rivers and other navigable waters and the survey of land (art. 13). The bureau of industry is to plan, regulate, supervise, and promote agricultural,

sericultural, pastoral, forest, fishing and mining enterprises, and is concerned with matters relating to factories, ports of trade, exhibition and examination of merchandise, examination of weights and measures, labor unions, farmers' associations, chambers of commerce and other related matters (art. 14).

In the administration of provincial affairs the commission is under the supervision of the Ministry of the Interior and must act in accordance with national laws (art. 1). As the directors of the bureaus are *ex officio* members of the provincial commission and as all bureaus are subject to the supervision and control of the administrative departments of the Executive Yuan, the National Government thus keeps itself in close touch with the provinces.

The commission is a policy-framing as well as a policy-executing body. Owing to the absence of a provincial legislature, it also performs the function of a legislative organ by virtue of its ordinance power (art. 2).

#### DISTRICT GOVERNMENT<sup>1</sup>

"The hsien (district) is the unit of self-government" says Dr. Sun in his *Fundamentals of National Reconstruction*. "The citizens of a fully self-governing hsien," continues he, "have the right of direct voting for the election of officers, the right of direct recall, the right of direct initiative, and the right of direct referendum." The significance of the district in the "five-power" system cannot, therefore, be denied. On the basis of population and area, financial resources and local problems, districts are now classified into three groups (art. 4).

##### (a) *District Executive*

The district executive consists of a magistrate, from two to four assistants known as chiefs of sections or

<sup>1</sup> Under the Revised Law of July 7, 1930.

divisions, four experts, and a host of clerks and other employees. The magistrate, like the French *maire*, occupies a dual position (art. 3). On the one hand, he is an agent of the provincial government, ready to do its errands and subject to its constant supervision. On the other, he is the chief executive of the district, responsible for its entire administration. He is appointed by the National Government at the instance of the provincial bureau of civil affairs (to be chosen by popular vote when the conditions laid down in article 8 of Dr. Sun's *Fundamentals of National Reconstruction* are fulfilled) for a term of three years and is eligible for reappointment (arts. 11 and 12). The actual work is, however, performed by experts who now head four bureaus: public safety, reconstruction, finance, and education (art. 16). Other bureaus may be created on request. These comprise the bureaux of public health, land, social affairs and food provision (art. 16). The bureau of public safety is charged with such duties as the registration of families, the preservation of peace, the prevention of fires and epidemics, the protection of forests, sanitation, relief work and the regulation of fishing and hunting. The finance bureau has to do with taxes, bonds, public property, and local finance. The reconstruction bureau deals with affairs in connection with land, agriculture, mining, forest, water works, roads, bridges, labor, and public enterprises. The education bureau is in charge of schools, libraries, museums, public athletic grounds, and other cultural enterprises. The heads of the bureaus are appointed by the provincial government on the recommendation of the magistrate after passing an examination (art. 17). The magistrate and his staff and the heads of the bureaus constitute the district council (art. 21). Matters concerning the district budget and debt, the handling of public property and the regulation of public enterprises are within its competence to discuss (art. 22).

*(b) District Legislature*

The District Assembly (Hsien Ts'an I Hui) is to be an organ representative of the local citizens. The term of its members is three years, one third of them retiring annually (art. 25). It is a unicameral chamber and its size is to be determined by law. Being the final authority to pass upon measures initiated by the district council and those presented by its own members concerning especially district finance (art. 26), it serves as a check upon the district council. At the time of writing very few district legislatures have been organized. According to law the district legislature will be established when the sheriff of the county is elected by popular vote (art. 27). The district council is, therefore, acting on its own responsibility. (In June, 1932 a law governing the organization of the district legislature was adopted by the Legislative Yuan, which stipulates that the term of office of the district legislators is two years.)

It is important to mention that in addition to the separation of executive and legislative functions in the district, the judicial powers formerly exercised by the magistrate are now being shifted to independent courts known as local (district) courts.

## LOCAL UNITS WITHIN THE DISTRICT

Each district contains a number of counties or ch'ü (sections) (art. 6). As the district government itself has not been completely organized on the basis of the law of 1930, all that can be said of the county government is that there is a sheriff (chief) appointed by the provincial government together with a few assistants appointed by the magistrate. But one year after the promulgation of the law of 1930 the provincial government, in view of local conditions, may recommend a date to the Ministry of the Interior for the popular election of the sheriff (art. 32). It is the sheriff and

his assistants together with the chairman and vice-chairman (chiefs) in the villages and towns within the county that constitute the county council, which is required to meet once every month (art. 37). The main function of the council relates to county finance (art. 38).

The county assembly is composed of all the citizens of the county and is empowered to exercise the rights of election, initiative, referendum and recall (art. 47 of the Revised Law for the Enforcement of Self-Government in the County, July 7, 1930).

In order to supervise the conduct of the sheriff and county finance, a supervisory committee of from five to seven members is to be elected by the county residents (art. 31).

By law each county contains from ten to fifty villages (hsiang) or towns (chen), and each village or town about one hundred families (arts. 6 and 7). The only distinction between the two is that the town or chen is urban in character and has a market. Below the villages and towns are the li and lin. Twenty five families constitute a li and five families a lin.

### VILLAGE AND TOWN GOVERNMENT

The structure of government in the villages and towns, li and lin is outlined in the Law governing the organization of the district government. Each village or town has a chairman and a vice-chairman<sup>1</sup> and a supervisory committee of from three to five members, all elected by the qualified voters who constitute themselves into a village assembly or town meeting (arts. 40, 42, and 44). The village assembly or town meeting is vested with the rights of suffrage and recall (art. 43). The supervisory committee

<sup>1</sup> The number of vice-chairman is determined by the number of families in the village or town, one additional vice-chairman for five hundred more families (art. 40 of the Revised Law governing the organization of district governments, July 7, 1930).

supervises local finance and the conduct of the chairman and vice-chairman (art. 44). Before the popular election of the sheriff in the county, the village or town people are required to elect twice as many chairmen and vice-chairmen as the village or town is entitled to in order that the district magistrate may have a choice (art. 45).<sup>1</sup> The chairman and vice-chairman may be removed by the magistrate in addition to the possibility of being recalled by the village assembly or town meeting (art. 46).

Each li or lin has a chairman elected by the residents in the li or lin. He is subject to recall and is responsible for self-government affairs (arts. 48 and 50).

#### LAW FOR THE ENFORCEMENT OF SELF-GOVERNMENT IN THE VILLAGES AND TOWNS<sup>2</sup>

Though only a beginning is made in the organization of village and town governments, an elaborate law for the enforcement of self-government in the villages and towns has been adopted. Being intended to hasten the program of self-government in these small units, the foundation of national democracy, such a law deserves careful analysis.

##### (a) *Who Are Full-fledged Citizens in the Village or Town?*

Any person of twenty years of age regardless of sex, who has one year's residence in the district or town, or possesses a dwelling house for two or more years is qualified to exercise the rights of suffrage, initiative,

<sup>1</sup> For instance, if a village is entitled to have a chairman and a vice-chairman, the voters will be required to elect two chairmen and two vice-chairmen from whom one chairman and one vice-chairman will be chosen by the district magistrate.

<sup>2</sup> Promulgated on September 18, 1929 and revised on July 7, 1930.

referendum and recall after taking an oath and getting himself registered. The following classes are, however, excluded from enjoying these political privileges: those who have been proved anti-revolutionists, corrupt officials, and notorious bad characters, those who are prohibited from taking control of property such as bankrupts or imbeciles, and, finally, opium-smokers (art. 7).

(b) *The Functions of the Village Assembly  
or Town Meeting*

The functions of the village assembly or town meeting comprise the following:

1. Election and recall of the village or town chairman
2. The making and amending of self-government regulations
3. Determination of village or town regulations
4. Determination of budgets and financial statements
5. Determination of matters entrusted by the village or town chairman
6. Determination of matters initiated by the li and lin and the citizens (art. 21)

All measures, in order to be valid, must be passed by a majority of those present at the village assembly or town meeting (art. 22). Two sessions will be held each year (art. 25), but no session is to last for more than six days (art. 26).

(c) *The Duties of the Village or Town Chairman  
and Vice-Chairman*

The chairman and vice-chairman of the villages and towns are executive officers entrusted with duties relating to census taking, the registration of vital



statistics, land investigation, the construction and repairing of roads, bridges and parks, education and other cultural enterprises, local defense, the physical training of the citizens, sanitation, water works, forest protection, the improvement and protection of agriculture, industry and commerce, the conserving and equalizing of food supply, the regulation of reclamation, pasturage, fishing and hunting, the organization and direction of coöperative societies, the improvement of local customs, the providing of means for the care of the young and the aged, philanthropic and relief work, public enterprises, the drafting of self-government regulations, the regulation and disposition of finance and public property, the compilation of budgets and financial statements, matters entrusted by the district and county governments and other matters which according to law should be performed (art. 30).

The chairman and vice-chairman of the village or town are elected for one year and are eligible for re-election (art. 37). The chairman is required to make an oral or written report to the village assembly or town meeting with reference to what has taken place during his term (art. 39).

(d) *The Supervisory Committee and the  
Conciliatory Committee*

The supervisory committee consists of from three to five members, elected for one year (art. 55). It holds its meeting every month (art. 48). In rotation the members sit as chairmen (art. 49). Decisions are rendered by majority vote (art. 50).

The conciliatory committee is to mediate in civil and criminal cases. Its members are all elective, but the chairman and vice-chairman of the village or town are ineligible for membership (arts. 32 and 33).

(e) *Finance*

The following items constitute the main sources of revenue in the village or town:

1. Income from village or town property and funds
2. Income from public enterprises
3. Self-government funds (from the higher governmental authority)
4. Subsidies from the district and county
5. Special contributions (from the inhabitants, if they so approve in village assembly or town meeting, art. 62)

By law the revenue and expenditure must be reported every three months (art. 65).

(f) *Educational Program*

But without education the citizens may abuse their political privileges. On account of this, the village or town is required to establish primary, continuation and citizen-training schools (art. 34). Within four years all illiterates from ten to forty years of age must receive one and one half years' education in the continuation or citizen-training schools. The subjects taught in such schools include Party instructions (tenets of the Nationalist Party), self-governing regulations, the national and world situation, and the details of the district in which the village or town is situated (art. 35).

(g) *Government in the Li and Lin*

Like the French *arrondissement* the *li* and *lin* are numbered (art. 66). Each has a chairman entrusted with functions relating to self-government and matters handed down from the district, county, village or town governments (art. 74). His term is one year. In addition, there is an assembly in each *li* or *lin*, consisting of all the qualified voters. A majority of them

constitute a quorum, and decisions are rendered by the majority of those present at the assembly meeting (art. 67). The assembly meeting must not last for more than one day (art. 70). On the request of ten families the chairman of the li must call for a meeting. In the case of the li in two families will be sufficient (art. 68).

## THE PROVISIONAL CONSTITUTION AND DISTRICT SELF-GOVERNMENT

In order to hasten the program of self-government in the districts the Provisional Constitution adopted by the National People's Convention in May, 1931 stipulated that the districts should organize Committees for the Preparation of Self-Government in the Districts to undertake the work outlined in article 8 of the *Fundamentals of National Reconstruction* (art. 82).

## MUNICIPAL GOVERNMENT

### (a) *Features of Municipal Government*

From the standpoint of comparative local government municipal government in China is characterized by four features. The first is the absence of a charter. All cities are now organized in accordance with the Law promulgated on May 20, 1930 (formerly under the Law of March, 1928). The second is a provision to the effect that certain cities are under the direct control of the central government (Executive Yuan), while others are under the supervision of the provincial governments.<sup>1</sup> Cities of the first group must possess one of the following three features: (1) being the seat of the national capital, (2) having a population of 1,000,000

<sup>1</sup> Revised Law governing the organization of municipal governments, May 20, 1930, arts. 2 and 3.

or more, (3) having special political and economic characteristics. But if a city happens to be the seat of the provincial capital, it is to be under the jurisdiction of the provincial government though it may possess the second or third feature. Cities which have a population of 300,000 or more, or of 200,000 with their business, land and franchise taxes amounting to more than half of the total revenue annually form the second group. Thirdly, unlike the American cities, which may be governed by a mayor and council, by a commission or by a city-manager, cities in China are uniformly organized on the mayor and council plan. Fourthly, similar to the charters in England and the United States, the Law of 1930 is a grant of powers.

### (b) *The Mayor and the Council*

In point of structure and practical operation the Chinese municipal government is neither of the continental nor of the American mayor and council type. In other words, the powers of the municipal executive and legislature are balanced. At the head of the administration is the mayor who is appointed by the National Government.<sup>1</sup> Below him are two councillors.<sup>2</sup> Being concerned with the drafting and consideration of municipal regulations and ordinances, they are important advisers to the mayor. The secretariat,<sup>3</sup> which is headed by a chief secretary, is concerned with clerical and miscellaneous duties and other works which fall outside of the scope of the bureaus. In addition, there are four bureaus—social affairs, public safety, finance, and public works.<sup>3</sup> Bureaus of education, public health, land, public utilities and port affairs may be created if conditions so necessitate.<sup>4</sup> Their work is at present distributed among the other

<sup>1</sup> Revised Law governing the organization of municipal governments, May 20, 1930, art. 13.

<sup>2</sup> *Ibid.*, art. 20.

<sup>3</sup> *Ibid.*, art. 14.

<sup>4</sup> *Ibid.*, art. 15.

bureaus. (There is no bureau of public safety in a municipality which happens to be the seat of the national capital or of a provincial capital. Its duties are performed by the metropolitan police force or provincial capital police force.)<sup>1</sup> The mayor, the two councillors and the directors of bureaus constitute the municipal council, which is required to meet every month.<sup>2</sup> The council is empowered to deal with the following things: rules regarding the work of the secretariat and the bureaus or their divisions, municipal regulations, budgets and accounts, income and debt, municipal property and public utilities, jurisdiction of the bureaus, and matters entrusted by the mayor.<sup>3</sup>

#### (c) *Municipal Assembly*<sup>4</sup>

The Municipal Assembly which is yet to be organized is a legislative organ. Its members are to be elected by the citizens of the municipality. Their term of office is three years and one third of them retire annually. (According to the Law governing the organization of the municipal assembly adopted in 1932, the term of office of the municipal legislators is one year.) It has a chairman and a vice-chairman, elected by its own members. By law the Assembly and the Council may recommend to each other measures as to what should be done and what not. But the decisions of the Council must have the approval of the Assembly.

#### (d) *Municipal Powers*<sup>5</sup>

The powers of the city government in China, as in other countries, are delegated and defined. Though

<sup>1</sup> Revised Law governing the organization of municipal governments, May 20, 1930, art. 16.

<sup>2</sup> Ibid., art. 24.

<sup>3</sup> Ibid., art. 25.

<sup>4</sup> Ibid., arts. 28 to 34.

<sup>5</sup> Ibid., art. 8.

local in character, they are quite comprehensive in scope, dealing with such matters as census taking and the registration of vital statistics; the providing of means for the care of children and the aged and those who are in distress; the conservation of food supply; the improvement and protection of agricultural, industrial and commercial enterprises; labor administration; the protection and regulation of afforestation, reclamation, pasturage, fishing and hunting; the supervision of public utilities under private management; the organization and direction of co-operative societies and enterprises for mutual benefit; the improvement of local customs, educational and other cultural enterprises; public safety; fire prevention; public sanitation; the establishment and regulation of hospitals, markets, slaughter houses, and places of recreation; the compilation of budgets and financial statements; the regulation and disposition of public properties; the management and control of municipal public undertakings; land administration; the construction and repairing of public buildings, parks, athletic grounds and cemeteries; the direction and regulation of private construction work; roads, bridges, canals, embarkments, dykes and other public works; the management of waterways, harbor administration and port affairs, and matters delegated by superior governmental authorities.

(e) *Municipal Finance*<sup>1</sup>

The revenue of the municipality is derived from the following sources; land tax, house tax, business tax, franchise tax, advertisement fees, income from public properties, income from public enterprises, and other taxes and duties authorized by statute.

<sup>1</sup> Revised Law governing the organization of municipal governments, May 20, 1930, art. 9.

(f) *Territorial Units Within the Municipality  
and Their Governmental System*

Each municipality contains a number of ch'ü or wards; each ward ten fang; each fang twenty li; each li five lin and each lin five families.<sup>1</sup> The ward government consists of an assembly, a representative assembly, a chairman and a supervisory committee.<sup>2</sup> The assembly is composed of all the citizens of the ward and is empowered to exercise the rights of election, initiative, referendum and recall. It meets once a year and is presided over by the chairman of the ward. The representative assembly is made up of delegates from the fang; two from each. (This representative assembly will not be organized until the chairman of the ward is elected by popular vote.) Its functions are (1) consideration and approval of the ward budget and financial statements, (2) consideration of matters delegated by the municipal government or the ward chairman, (3) consideration of measures proposed by the fang, (4) consideration of measures initiated by its own members. It meets every three months, no session is to last for more than ten days. The chairman is the presiding officer of the ward assembly and is elected by it. (Just now he is appointed either by the National Government or by the provincial government.) His term is one year. The supervisory committee consists of two members elected by the representative assembly and performs supervisory functions

The government of the fang is represented by an assembly, a chairman, a conciliatory committee and a supervisory committee with functions very similar to those of the same institutions in the ward.<sup>3</sup> An

<sup>1</sup> Revised Law governing the organization of municipal governments, May 20, 1930, art. 5.

<sup>2</sup> Ibid., arts. 35, 41, 62, 70.

<sup>3</sup> Ibid., arts. 73, 79, 81, 102.

educational program is outlined roughly corresponding to the one in the village or town.<sup>1</sup>

Both the li and lin have an assembly and a chairman.<sup>2</sup> The assembly consists of all those of twenty years of age, who have continuously resided in the locality for six months or more or who possess a dwelling house. The chairman is an executive officer simply to carry out the orders of the superior governmental authority or what has been cut and dried for him by the assembly.

(g) *The Question of Retaining or Abolishing Municipalities*

The abolition of the municipalities in Soochow and Tsinan not long after their creation has caused great uncertainty in the minds of those who are interested in Chinese municipal politics. (Tsinan has now been recreated a municipality.) Hence the question—should municipalities be retained or abolished? While the characteristic American attitude that “God made the country while man made the town” is not prevalent in China, the Chinese public are not very enthusiastic about the creation of municipalities. In fact, there are some who virtually advocate their abolition. The reasons that they advanced are three in number: First, the maintenance of a separate administration in the municipality involves a great deal of expense which can be met only by levying additional local taxes. Second, in the absence of a clear boundary between the district and the municipality, there may be overlapping of jurisdiction or conflict of authority between the governments of the two. Third, as the problems of most Chinese cities are comparatively simple, there is no need for municipal governments.

But the opponents of municipalities have entirely ignored the services that municipalities may render.

<sup>1</sup> Revised Law governing the organization of municipal governments, May 20, 1930, arts. 83, 84.

<sup>2</sup> Ibid., arts. 121, 127, 132.



In the first place, since China is undergoing a transition from an agricultural to an industrial stage, municipalities may help to solve the new problems arising out of the changed conditions. Secondly, the district government, which is already burdened with the elaborate program of self-government, may not be able to deal with questions relating to public works, water supply, police administration, fire prevention and protection, housing and poor relief, public sanitation and countless other things. The creation of separate governmental machinery to handle these matters is, therefore, necessary. Thirdly, the creation of special governments in cities may hasten the material and cultural progress of all of China, since cities are the centers of learning, industry and commerce.

The need for municipalities in China may not seem to be urgent at present, but there is no reason why localities characterized by special social, economic and political features, should not be created municipalities. In clear words the Provisional Constitution stipulates that municipalities may be created in localities where industry and commerce, population and other special conditions warrant.

#### UNITS OF LOCAL GOVERNMENT

The units of local government in China are, as sketched above, (1) the provinces, (2) the districts, and (3) the municipalities. Since the establishment of the Nanking Government six new provinces<sup>1</sup> have been brought into existence so that the total number is twenty eight instead of twenty two. These twenty eight are Anhwei, Chahar, Chekiang, Ch'inghai, Fukien, Heilungkiang, Honan, Hopei (Chihli renamed), Hsik'ang, Hunan, Hupei, Jehol, Kansu, Kiangsi, Kiangsu, Kirin, Kwangsi, Kwangtung, Kweichow,

<sup>1</sup> Tyau: Two Years of Nationalist China, pp. 72 and 73.

Liaoning (Fengtien renamed), Ninghsia, Shantung, Shansi, Shensi, Sinkiang, Suiyuan, Szechuan, and Yunnan. The districts, numbering 1943<sup>1</sup> in all, are the real units of local government. In addition, about fifteen municipalities<sup>2</sup> have been created to meet new economic conditions. Some of them are under the direct jurisdiction of the National Government and others are under the jurisdiction of the provincial governments.<sup>3</sup>

#### TERRITORIAL GOVERNMENT <sup>4</sup>

##### (a) *The Relation of Mongolia and Tibet to China*

The origin of the Mongol Empire dates back to the time of Genghis Khan in the twelfth century. But it was not until 1264 that Kublai Khan, the descendant of the great conqueror, became Emperor of China<sup>5</sup> and established the Yuan Dynasty. "These remarkable Tatar warriors and their successors, with their black hair, piercing eyes, swarthy countenances, and stocky, muscular bodies" conquered not only northern Asia but also eastern Europe. After about one hundred years of domination in China, however, the Mongols declined. Their dynasty was extinguished in 1368, and they were incorporated in the Chinese Empire by the Manchu Emperors between 1688 and 1756.<sup>6</sup>

Mongolia is divided into two sections, Outer or Northern Mongolia and Inner or Southern Mongolia. In the absence of a clear boundary line, the division is "purely political and artificial," "being the result of tribal agreements and the work of the Chinese rulers." Outer

<sup>1</sup> Tyau: op. cit., p. 85.

<sup>2</sup> Ibid., p. 79.

<sup>3</sup> See arts. 2 and 3 of the Revised Law governing the organization of municipal governments.

<sup>4</sup> See the same topic in the first chapter.

<sup>5</sup> Weigh: Russo-Chinese Diplomacy, p. 146.

<sup>6</sup> Harris: Europe and the East, p. 548.

Mongolia has an area of 1,100,000 square miles and a population of 1,200,000. Inner Mongolia has an area of 263,500 square miles and a population of 600,000.<sup>1</sup> Bordering the boundaries of the four Chinese provinces in the north—Suiyuan, Chahar, Ninghsia and Kansu, Mongolia holds a strategic position. Any aggressive design in Mongolia on the part of foreign powers would, therefore, threaten China's national existence.

Of no less importance is the relation of Tibet to China. This mountainous region is of about 463,000 square miles in area and possesses a population of 2,500,000.<sup>2</sup> As early as 1720, it fell under the sway of the Manchus,<sup>3</sup> and since then, it has been considered, theoretically at least, as an integral part of the Chinese Empire. Like Mongolia it is divided into Front or Eastern Tibet and Rear or Western Tibet. Again, the division is ambiguous. Being a close neighbor to the western province, Hsik'ang, it is of vital concern to China's national defense. The advance of Tibetan troops to Hsik'ang recently constitutes a serious menace to China's territorial integrity.

(b) *The Government of Mongolia and Tibet*

In spite of the conversion of China's special districts into provinces, the government in Mongolia and Tibet, the only outlying territories of the Republic, remains unaltered. In Mongolia, both Inner and Outer, the leagues and banners still constitute the chief administrative units, at the head of which are military officers. They in turn are responsible to the Commission of Mongolian and Tibetan Affairs at Nanking. At the National Convention held in May, 1931 an important resolution was adopted to the effect that self-government be accorded to Outer Mongolia. If

<sup>1</sup> Harris: op. cit., p. 542 and also footnotes No. 1 and 2.

<sup>2</sup> Ibid., footnote No. 1.

<sup>3</sup> Ibid., p. 328.

that policy should be successfully carried out, the relation between China and Outer Mongolia would be similar to that between England and her self-governing dominions.

In Tibet the government is in the nature of a "theocracy" since the actual work is done through a hierarchy of buddhist lamas. Though the Chinese Government still claims authority notwithstanding the Tibetan assertion of independence in 1913, the control is utterly nominal.

### (c) *Controlling Agency*

Under the Manchu regime the outlying territories were governed by the Li-fan-yuan or Colonial Office. Soon after the Republic was established a Council on Mongolian and Tibetan Affairs are created, and special districts like Ch'inghai, Jehol, Chahar, Suiyuan, etc. were controlled by military officers. But in the task of protecting the frontiers and of promoting colonization and trade in Mongolia and Tibet the Council proved to be incompetent.

With the establishment of the Nanking Government a new agency has been brought into existence, namely, the Commission on Mongolian and Tibetan Affairs.<sup>1</sup> It consists of a chairman and a vice-chairman and from nine to fifteen commissioners. Among them are the Panchen Lama and seven Mongol and Tibetan dignitaries. In addition, the Commission has a counsellors's office, a secretariat, a department of general affairs, a department of Mongolian affairs, a department of Tibetan affairs, and two committees—technical and planning. Since its creation in February, 1929 the Commission has earnestly set itself to work. New maps showing "the boundaries of the various leagues and banners, the principal highway routes and caravan stations" are being prepared. Modern literature on

<sup>1</sup>Tyau: op. cit., p. 297.

cattle raising is being collected and translated into Mongolian. A college for the education of the young Mongolians and Tibetans has been established in Peiping. Plans for improving communication facilities have been proposed. Forty experts will be sent out to investigate the actual situation in both Mongolia and Tibet. In a word, the policy of the National Government is active and enterprising, and is in marked contrast to the policy of indifference during the Manchu regime and in the early years of the Republic.

(d) *The Mongolian Conference*<sup>1</sup>

Being intended to bring Mongolia into closer contact with China, the Mongolian Conference, which met from May 29th to June 12th 1930 at Nanking, marks an important step towards China's unity with her outlying territories. It was attended by 54 delegates from Mongolia and 24 delegates representing the various branches of the National Government. After two weeks of deliberation, the Conference adopted a manifesto and no less than 125 resolutions. In the manifesto it was stated that "the National Government will, on its part, spare no effort to bring to realization various schemes for the economic, industrial, educational and political development of this extensive outlying territory (Mongolia)." The resolutions, embracing a great variety of reforms, relate to such things as the establishment, within the shortest period possible, of independent judicial tribunals, the encouragement of educated Mongolians to study in China Proper, the installation of radio, telephone and telegraph facilities as well as other means of communication, the promotion of public health enterprises, the organization of native Mongol police, the adoption of

<sup>1</sup> Tyau: op. cit., pp. 299-304.

*China Weekly Review*, June 28, 1930, Vol. LIII, No. 4, pp. 134-.

improved methods of pasturage and cattle breeding, the introduction of improved agricultural methods, the promotion of afforestation, the development of trade and commerce, of native industries and of mineral resources, geographical surveys, etc. Probably one of the most important resolutions is with reference to the abolition of the banner system. Owing to the peculiar conditions in Mongolia, however, it was finally agreed that steps be taken towards its gradual abolition. A law governing the organization of leagues and banners containing thirty three articles was, therefore, adopted by the Conference. According to it, the present system of leagues and banners, with their respective administrative powers and jurisdiction, will remain unchanged (art. 1). All military, diplomatic, and administrative affairs affecting Mongolia shall be under the direct control of the National Government (art. 6). Each league shall have a chief and a deputy chief. The chief shall have power to regulate all affairs of his own league. The deputy chief is simply his assistant (art. 8). The league shall also have a league assembly which is to be composed of representatives elected by the banners under its jurisdiction (art. 15). The assembly shall have the power of legislation and general supervision (art. 16). In like manner, each banner has a chief to be assisted by from two to six banner councillors (arts. 19 and 20). In addition, there is a banner assembly of representatives to be elected by the people in the banner (art. 28). Its functions are similar to those of the league assembly

(e) *The Proposed Tibetan Conference*

A similar conference for the deliberation of Tibetan affairs has been proposed, but important reasons including difficulties in communication necessitate its postponement. In view of the strained relations

between China and Tibet since the establishment of the Republic, such a conference is highly desirable. (The Tibetan declaration of independence in 1913 and the advance of Tibetan troops in Hsik'ang, a Chinese province in the western frontier in the summer of 1931 are some of the instances.) It is to be admitted that any attempt on the part of China to introduce radical changes into the social, educational and political systems of the Tibetans will antagonize their racial feelings, since they are a conservative people. But for reasons of state, it is necessary to bring China and Tibet into intimate relationships. To devise ways and means to accomplish this aim seems to be the supreme task in which the proposed Tibetan Conference should engage itself.

(f) *Foreign Relations of Mongolia and Tibet*

Because of the letting alone policy of the Chinese Government in the years past Mongolia and Tibet have been subject to sinister foreign influences. Taking advantage of the Chinese Revolution on October 10, 1911, Outer Mongolia, at the instigation of Russia, proclaimed her independence on December 1st of the same year. The theory of Mongolian independence was that the allegiance of Mongolia to China was automatically terminated with the overthrow of the Manchus. On November 3, 1912 a Russo-Mongol agreement was made at Urga whereby Russia pledged her support of Mongol autonomy<sup>1</sup> which was recognized by a Sino-Russian declaration and exchange of notes on November 5, 1913.<sup>2</sup> In spite of all this, China succeeded in asserting her suzerain rights in Outer Mongolia by the conclusion of a Sino-Russian-Mongol treaty on June 7, 1915.<sup>3</sup> In 1919 she took

<sup>1</sup> MacMurray: *Treaties and Agreements with and Concerning China*, Vol. II, p. 992 ff.

<sup>2</sup> *Ibid.*, p. 1066.

<sup>3</sup> *Ibid.*, p. 1239.

a further step by cancelling the autonomy of Outer Mongolia. No sooner had this been done than Urga was taken by White Russian troops, and an independent government under the Living Buddha was set up with Ungern as the real administrator. The White regime was, however, shortlived. In 1921 it was completely overthrown, and under the Red influence a Revolutionary Mongol People's Government was established at Kiachta, the Living Buddha only preserving his ecclesiastical prerogatives. On May 31, 1924 a treaty was concluded between China and Russia which recognized Outer Mongolia as "an integral part of the Republic of China."<sup>1</sup> Whatever may be said on paper, Outer Mongolia, as matters stand to-day, is in fact one of the component units of the U.S.S.R., and this is no surprise when one reads the statement of Commissar Chicherin that "The Soviet Government recognizes Mongolia as a part of the Republic of China, enjoying, however, autonomy so-far-reaching as to preclude Chinese interference with the internal affairs and independent relations of Mongolia."<sup>2</sup>

Japan's effort to establish her paramountcy in Inner Mongolia is no less conspicuous than that of Russia in Outer Mongolia. By the Treaty of May 25, 1915 and the exchange of notes<sup>3</sup> bearing the same date she secured the right of trade and residence and the preferential right in loans for the construction of railways in Eastern Inner Mongolia.

Neither is foreign influence absent from Tibet, where Great Britain has a keen interest in the defense of India and in the promotion of trade between India on the one hand and Tibet and China on the other. By the Chefoo Convention of 1876, the O'Connor

<sup>1</sup> Weigh: *op. cit.*, text of the Treaty, art. 5, p. 350.

<sup>2</sup> *China Year Book 1928*, p. 379.

<sup>3</sup> MacMurray: *op. cit.*, Vol. II, No. 1915/8, pp. 1221, 1223, 1225.

The Treaties and Notes of 1915 have never been approved by the Chinese Parliament which possessed the final authority in treaty-making. See Wood, *The Treaties and Notes of 1915*.



Convention of 1886, the Calcutta Agreement of 1890 and the Trade Agreement of 1893 she secured the right not only to send expeditions through Tibet and Yunnan (in west China) but also to trade with Tibet.<sup>1</sup> In spite of all this, England's policy of commercial intercourse was neither welcomed by the Tibetans nor approved by the Chinese Government, and what was more serious was the intrigues of the Russians in Tibet. It was only when Russia was busily engaged in the preparation of a war with Japan that England sent a military expedition to Tibet in 1903 and succeeded in acquiring certain trade privileges by the Treaty of September 7, 1904.<sup>2</sup> By a subsequent convention with China (April 27, 1906)<sup>3</sup> she secured the approval of the Chinese Government to the Tibetan Treaty and at the same time she gave assurances that she would not annex Tibet or interfere in its internal administration. In the Anglo-Russian Convention of August 31, 1907<sup>4</sup> the integrity of Tibet was guaranteed and the suzerainty of China and the special interests of England in Tibet were recognized.

Then came the Chinese Revolution in 1911. In spite of uprisings against Chinese garrisons in Tibet, Tibet was declared an integral part of the Republic of China and was given representation in the National Assembly. On January 2, 1913, however, the Tibetans declared their independence. A conference composed of delegates from China, England and Tibet was finally arranged, which met at Simla on October 10, 1913 with Sir Henry McMahon presiding. After prolonged negotiations a treaty was signed on April 27, 1914,<sup>5</sup> which, owing to Sino-Tibetan boundary questions, failed of ratification by the Chinese Government.

<sup>1</sup> Harris: *op. cit.*, p. 331.

<sup>2</sup> Customs Treaties, Vol. I, p. 652.

<sup>3</sup> MacMurray: *op. cit.*, Vol. I, No. 1906/2, pp. 576 and 577.

<sup>4</sup> *Ibid.*, No. 1907/16, pp. 677 and 678.

<sup>5</sup> *Ibid.*, No. 1906/2, p. 581. Only a summary is given. See also Harris, *op. cit.*, pp. 339-341.

Since Mongolia and Tibet are historically and geographically connected with China, China is now taking a particularly keen interest in their social, economic and political development. She desires to see more intimate relations established between her and Mongolia and Tibet, that the integrity of these outlying territories be maintained, that their interests be best promoted, that no foreign power interfere in their internal administration or establish its paramount influence, but that reasonable trading privileges be granted. Whether such policies may be actually carried out is a question which depends much upon the attitude and policy of Soviet Russia and of Great Britain.

## CHAPTER XVI

### CHINA'S TREATY RELATIONS

#### CHINA'S TREATY RESTRICTIONS AND THE ENDEAVOR TO FREE HERSELF

SINCE China's forced opening more than eighty years have elapsed. During this interval innumerable treaties, conventions, etc. have been concluded between her and foreign countries. Not a small number of them however, to use the expression of Professor MacDonell, "belong to the class known to jurists as *iniquum foedus*, the imposed treaty."<sup>1</sup> Furthermore, they are unilateral in character, impairing her sovereign rights and jeopardizing her national development. The existence of such agreements has produced a situation which is vividly depicted by Professor W. W. Willoughby in the following remarks:

"Probably nowhere else in the world is there such a mixture of territorial rights with foreign privileges and understandings, of purely political engagements with economic and financial concessions, of foreign interests conflicting with one another and with those of the nominally sovereign state. . . . But when, as in the case of China, we have a Power which permits the exercise within its limits of all kinds of extraterritorial rights or privileges; when there exist within its territory more or less definite claims by foreign Powers to spheres of interest and 'special interests;' leased territories, treaty ports, concessions, settlements, and legation quarters; when there are in force a multitude of special engagements to foreign Powers with reference to commercial and industrial rights, railways and mines, loans and currency; when two of its chief revenue services—the maritime customs and the salt tax—are under

<sup>1</sup> Tyau: Legal Obligations Arising Out of Treaty Relations Between China and Other Powers, prefatory note by Professor John MacDonell.

foreign overhead administrative control or direction; when the proceeds of these and other revenues are definitely pledged to meet fixed charges on foreign indebtedness; when, at various points within its borders, there are stationed considerable bodies of foreign troops under foreign command—when we have these and other phenomena all carrying with them limitations upon the free exercise by the central government of its ordinary administrative powers or its discretionary right to deal as it deems best with the individual nations with which it maintains treaty relations, we then have a condition of affairs which furnishes abundant material not only for theoretical or academic discussions by students of international jurisprudence, but for serious conflict and disputes between the nations concerned.”<sup>1</sup>

During the early period of her diplomatic intercourse China was little aware of this national degeneration. It was only when European imperialism founded on unilateral treaties was at its climax at the end of the nineteenth century that Chinese nationalism suddenly burst forth. It aimed at national regeneration and emancipation from foreign control. The ill-fated reform movement of 1898, the Boxer Uprising of 1900 and the Revolution of 1911 are one and all manifestations of this patriotism.

Later, in the two great international conferences at Paris and Washington, China again made known her national aspirations. To her despair and chagrin nothing was accomplished in the former. True, many things were done for her in the latter gathering, such as the settlement of the Shantung question, the statement of China policies by the participating Powers, a revision of her customs schedule, the authorization of an International Commission on Extraterritoriality, etc. Still, she came out dissatisfied for the simple reason that her legitimate requests such as tariff autonomy, abolition of consular jurisdiction, retrocession of the leased territories, etc. had not been given fair consideration.

<sup>1</sup> Willoughby: *Foreign Rights and Interests in China*, Vol. I, pp. 1-2.

Under such circumstances China could either subject herself to the unjust and burdensome obligations arising out of her treaty relations, or else make a desperate effort to readjust her international life. At the First National Congress of the Kuomintang held under the auspices of the then *de facto* government in the South in 1924, the abolition of "unequal treaties" was deliberately adopted as a foreign policy, and this action was echoed in the will of Dr. Sun Yat-sen, the leader of the Party, in the following year. In the meantime, China was notified by the treaty Powers that in their judgement there was no government representing the whole country to enter into negotiations on the question of treaty revision. It was partly on this account that the northern expedition of the recently established Nationalist movement was inaugurated in the summer of 1926. It was completed when Peking, the old capital, was captured by Nationalist troops in June, 1928.

During the process of rapid military disintegration on the part of the Peking Government, the foreign Powers,<sup>1</sup> in order to meet the changed circumstances, made a definite move to readjust their relations with China. The Memorandum communicated by H.M. chargé d'affaire at Peking on December 18, 1926 to the signatories of the Washington Conference,<sup>2</sup> that communicated to the U.S. Embassy in London on May 28, 1926,<sup>3</sup> the speech of Sir Austin Chamberlain at Birmingham on January 29, 1927,<sup>4</sup> that on January 19, 1928,<sup>5</sup> the communication made by the British Government to the League of Nations with regard

<sup>1</sup> But Japan stood out as an exception. Her design has been to prevent the political unification of China, and in order to maintain intact what she called her "vested interests" she opposed treaty revision.

<sup>2</sup> *China Year Book 1928*, pp. 756-758.

Whyte: *China and the Foreign Powers*, pp. 51-56.

<sup>3</sup> *China Year Book 1928*, pp. 759-761.

Whyte: *op. cit.*, pp. 56-57.

<sup>4</sup> Whyte: *op. cit.*, 58-59.

<sup>5</sup> *Ibid.*, pp. 62-63.

to China<sup>1</sup> together with the British proposals<sup>2</sup> for treaty modification laid before the Chinese authorities in the North and the South on January 27, 1927, and the Chen-O'Malley Agreements<sup>3</sup> concerning British concessions in Hankow and Kiukiang in February, 1927 are, substantially, indications of England's new policy towards China. Secretary Kellogg's statement<sup>4</sup> on January 26, 1927 and his note<sup>5</sup> of July 24, 1928 to Dr. C. T. Wang, Minister for Foreign Affairs of the National Government, though mere reiterations of the friendly policy of the United States, were highly appropriate at a time of national upheaval.

Then came into existence the significant new tariff treaties, significant in the sense that they restored to China one of her sovereign rights that had been in abeyance for more than three quarters of a century. But for her to play the role of a full sovereign state much remains to be done. On her part, the institution of a government strong enough to command the respect not only of her own citizens but also of the governments of the world is the supreme task. On the part of the foreign Powers, it is their duty as well as their interest "to do all that they can to preserve the integrity of China in the letter and spirit, to strengthen her Government and, as quickly as possible, to undo all that has been done to weaken her."<sup>6</sup> For "the rest of the world will gain by her strength."<sup>7</sup>

### EARLY INTERCOURSE

For several centuries in the past China had kept herself aloof from the rest of the world politically,

<sup>1</sup> Whyte: op. cit., pp. 64-67.

<sup>2</sup> Ibid., pp. 67-68.

*China Year Book 1928*, pp. 761-762.

<sup>3</sup> *China Year Book 1928*, pp. 738-742.

<sup>4</sup> Ibid., pp. 764-766.

<sup>5</sup> *China Weekly Review*, Aug. 4, 1928, p. 315.

*Chinese Social and Political Science Review*, July 1928, p. 59.

<sup>6</sup> T'au: op. cit., prefatory note by Professor MacDonell.

<sup>7</sup> Ibid.

economically and culturally. It was not until pressure was brought to bear upon her from without that the humiliated "Celestial Empire" began to open its doors to the commerce and influence of the Western States. This policy of seclusion, unwise if not suicidal, was, in a large measure, due to her geographical surroundings, national wealth, history and traditions, and the psychological disposition of the people. However, contact with the outside world was not unknown. Thus it is recorded that even before the Christian era visitors and travellers "came bringing fishskin cases, sharp swords and shields," that during the Chou Dynasty (1122-255 B.C.) intercourse had been maintained with eight foreign States, that in the second century B.C. a general named Chang Ch'ien advanced westward trying to establish relations with countries west of China (Central Asia), that Buddhism was introduced into China at about the same time, that in the third century of our era envoys from Rome were received by the Chinese court, that a market was established at Canton during the T'ang Dynasty (A.D. 618-907), that during the reign of Kublai (1260-1294), the grandson of Jenghiz Khan, Marco Polo, the celebrated Venetian traveller visited China, that diplomatic courtesies were exchanged between Peking and Rome in the year of 1338, that John de Marignolli, the envoy of Benedict XII resided in Peking for four years as Papal Legate. Such connections with the outer world, however significant they might be, have exerted little influence on China's international relations, particularly in the realm of foreign trade and diplomacy. China knew very little of, and was little known to the Western world.

THE OPENING OF MODERN PERIOD IN CHINESE  
DIPLOMATIC HISTORY: THE ARRIVAL  
OF FOREIGN TRADERS AND THEIR CHARACTER

It was under such conditions that the Portuguese arrived in 1516, the Spanish in 1575, the Dutch in 1622, the English in 1637 and the Americans in 1784, all concentrating their interest in Canton or its vicinity. This arrival of western traders in a determined effort to establish commercial relations with the Orientals marks the beginning of the modern period in Chinese diplomatic history. Ever since China's international relations have been most eventful and interesting, though lamentably unfortunate. While the south was frequented by vessels of those countries, the north was thrown open to the Russians, who concluded the first modern treaty with China, the Treaty of Nerchinsk, 1689, regulating matters of frontier trade, extradition, extraterritoriality (all on a reciprocal basis) and boundaries. For a while the foreigners seemed to be on good terms with the natives, as no restrictions were placed on their commercial enterprises and all ports were open to foreign trade. But the gross misconduct of the Portuguese and of others roused the suspicion of the Chinese, and resulted in the adoption of the policy of seclusion on the part of the Government. Referring to the foreigners in China S. W. Williams once said, "The outrageous behavior of foreign traders themselves must, moreover, be regarded as a chief cause of the watchful seclusion with which they were treated. . . . These characteristics of avarice, lawlessness, and power have been the leading traits in the Chinese estimate of foreigners from their first acquaintance with them, and the latter have done little to effectually disabuse Orientals upon these points."<sup>1</sup> A somewhat similar remark was made by Professor Douglas in speaking of the Portuguese at Ningpo.

<sup>1</sup> Williams: *The Middle Kingdom*, Vol. II, pp. 426-427.



"There the conduct of the foreigners had been infamous. They outraged every law and set the feeling of the people at defiance. They refused to submit to the native authorities, and on one occasion in revenge for one of their number having been cheated by a Chinaman they sent an armed band into a neighboring village and plundered the natives, carrying off a number of women and young girls."<sup>1</sup> Neither did the Spanish encourage intercourse in Manila, where the Chinese were treated with "peculiar severity." Mention must, however, be made of the peaceful Jesuits led by Matteo Ricci, who were granted the right of residence. It was they who first introduced into China scientific knowledge, rudimentary though it was. From the cultural standpoint they brought the East into contact with the West. In commerce and diplomacy they had little interest as their supreme mission was evangelization.

#### CIRCUMSTANCES UNDER WHICH THE TREATY OF NANKING WAS CONCLUDED

A close study of the situation in the eighteenth century at Canton, which was the only port of foreign trade after 1757, reveals the fact that the relations between China and the foreign Powers were by no means on a satisfactory basis. On the one hand the efforts of foreigners to establish commercial relations with China grew steadily more insistent as shown by the increasing numbers of foreign<sup>2</sup> merchantmen in Chinese waters and the arrival of various missions. On the other hand the fears of the Chinese Government, growing out of British imperialism in India, the Dutch conquest of the East Indies, the Portuguese aggressions in the Malay Peninsula, and the "atrocious conduct" of some of the foreign elements on the China coast tended to debar the commercial and diplomatic

<sup>1</sup> Douglas: *Europe and the Far East*, p. 11.

intercourse which was so keenly desired by England in particular because of her interest in world trade. It is not improbable that the English Government was aware of the unfavorable impression that foreigners had made on the Chinese; it was because of this that a policy of conciliation had been adopted with a view that British subjects in China might be placed on a better footing in commercial dealings. In spite of this, the Chinese Government felt it necessary to uphold the restrictive policy.

As to the English, their grievances were many: the way in which foreign commerce was conducted was extremely complicated and unsatisfactory; taxation was irregular and vexatious; the failure of the Macartney and Amherst missions was a national humiliation; the administration of justice in China was unsatisfactory and the laws were too harsh. From the standpoint of the Chinese, foreign trade was not a gain. On the contrary, it was a disturbance to national peace. In order to preserve the tranquillity of the Empire, it must be restricted and the unscrupulous foreign adventurers must be subject to Chinese laws in cases of grave offense. All these issues plus the opium question led to open rupture which resulted in the imposition on China of the Treaty of Nanking, 1842.

One of the main grievances of the foreign traders, the British merchants in particular, was the existence in Canton of an institution known as co-hong, an organization of Chinese merchants enjoying the monopoly of foreign trade. Being the only "medium of trade and communication" it was responsible for the debts and the conduct of aliens, and all fees and duties levied upon foreign ships and trade, and must transmit to the local authority all communications concerning matters of trade or intercourse addressed to it by the foreign traders in the form of petitions. The complaint of the English traders, however, as voiced by Professor Douglas in the following words,

was not so much against the extensive powers of the co-hong as against the want of the privilege of direct commercial intercourse: "One of the main evils of which the merchants complained was the system by which they were forbidden to trade with any except certain recognized dealers, who rigged the market as they chose, and, while filling their own pockets, kept the profits due to the foreigners at the lowest possible level compatible with continuance of the traffic."<sup>1</sup> They concluded, therefore, that the co-hong system, which deprived the foreigner of the privilege of direct access to the local authorities and of direct dealings with the native merchants and which, consequently, gave rise to troubles and misunderstandings, must be abolished.

Secondly, it was alleged by the English that taxation was irregular and vexatious. They complained that although a uniform duty of four per cent was established on all goods in 1720, the duty had mounted as high as 20 per cent since then, and that in addition the enormous fees claimed by the officials "reached almost beyond the dreams of avarice." In fact, their complaint did not lie against the regular charges of the government. It was the squeezes of the hong merchants resulting from the exorbitant exactions of the officials that they opposed. As a whole, the charges were founded on facts, but not infrequently the hong merchants themselves equally suffered.

Thirdly, the failure of the Macartney and Amherst missions in their endeavor to arrive at a better understanding between the two countries in the matter of trade has been cited in explanation of England's resort to force. It was complained that prior to the two missions Mr. Flint,<sup>2</sup> who proceeded northward in 1759 with a petition for the amelioration of trade conditions in Canton, was expelled from the capital;

<sup>1</sup> Douglas: *op. cit.*, p. 45.

<sup>2</sup> Williams: *op. cit.* Vol. II. pp. 448-449.

that although Lord Macartney,<sup>1</sup> who reached Peking in 1793 as a special ambassador, was granted two audiences with the Emperor and was received with courtesy, the situation at Canton remained unimproved; that the net result of the Macartney mission was but the issuance by the Emperor Ch'ien Lung, of mandates<sup>2</sup> to His Majesty George III reflecting arrogance and self-sufficiency; that the result of the Amherst mission in 1816,<sup>3</sup> appointed especially to remove the grievances of the English traders, was even worse than that of his predecessor because of his dismissal without an audience. Furthermore the proclamation of Governor Loo issued on August 18, 1834 (a part of which is cited below) when Lord Napier, the Chief Superintendent of British trade after the abolition of the trade monopoly of the East India Company in 1834, tried to enter into direct communication with the officials, was a clear expression of the restrictive policy of the Chinese Government: \*

"If, by chance, any Barbarian merchant should have a petition to make requesting an investigation of any affair, the tai-pan (chief supercargo) should present the petition in the prescribed form and an answer by proclamation should be awaited. . . . From the time Canton admitted outside Barbarians to its open market, all affairs relating to commerce and the control over the Barbarian merchants have been placed under the entire cognizance and responsibility of the said merchants (the co-hong). There never has been such a thing as official correspondence to and fro with a Barbarian Eye (headman)."<sup>4</sup>

Their patience became exhausted after these repeated failures so they said. As late commentators on the situation have concluded, three alternatives

<sup>1</sup> Williams: *op. cit.*, pp. 454-455.

<sup>2</sup> MacNair: *Modern Chinese History—Selected Readings*, pp. 2-11.

<sup>3</sup> Williams: *op. cit.*, Vol. II, pp. 453-459.

<sup>4</sup> Harris: *Europe and the East*, p. 379.

were open to them: submission to existing conditions of trade, resort to force, and withdrawal of all trade.<sup>1</sup> From the English point of view, the first was intolerable, the third was impracticable, the second was the only measure to be adopted. The seeds of conflict having thus been planted, a bitter harvest was inevitable.

Two other issues were at stake before the outbreak of hostilities. One was the question of China's laws and the administration of justice, the other the opium question. Concerning the former, complaints were made that Chinese laws made no discrimination between intentional and unintentional killing, that punishments were too severe, that the doctrine of extensive responsibility was unreasonable, and that the administration of justice in Chinese courts was "barbarous."

It was on these grounds that Sir George Staunton, then a member of the English Parliament, formulated a set of nine resolutions in 1833 recommending, *inter alia*, the institution of a British court in China, which, passed Parliament in a modified form known as "An Act to Regulate the Trade to China and India."

On the other hand, as the master of its own house, the Chinese Government had been persistently asserting its jurisdiction over all alien residents.

Lastly, it was the opium issue that led to armed conflict. For more than one hundred years (from 1676-1796), this drug had been a regular article of commerce, and as such it was subject to an official duty. Beginning from 1796, however, its importation was prohibited by the Chinese Government, and thereafter smuggling was practiced. In 1839, the opium imported mounted to 30,000 chests. So alarmed were the Manchus that a High Commissioner named Lin was appointed in the same year to exterminate the illicit trade. Being a man of iron will, he demanded,

<sup>1</sup> Williams: *op. cit.*, Vol. II, p. 459.

Soothill: *China and England*, p. 11.

a few days after his arrival in Canton in March, the surrender of all opium in the possession of the foreign community and a pledge from them under penalty of death not to engage in the traffic in the future. Upon their refusal, he blockaded the factory. As a result of his rigorous measure, 20,291 chests of opium were collected from the British community by Captain Elliot, who promised reimbursement from the British Government. The opium was surrendered to the Commissioner and was destroyed. In May the British community was ordered to leave for Macao where they stayed for about three months until the case of Lin Wei-li, a Chinese murdered by a party of British sailors, forced them to retire to Hongkong. Failing to surrender the murderer, the English were in danger of being blockaded again. On November 3rd, the first naval battle was fought in Chuenpi. Thus commenced the so-called "Opium War," a term "of our own, not Chinese invention"<sup>1</sup> says Professor Soothill, and the immediate cause of it, in the words of Lord John Russell, was "to obtain indemnification for the losses the merchants had sustained under threat of violence."<sup>2</sup> Victory went to Great Britain; the treaty of peace was concluded at Nanking, August 29, 1842.

#### THE TREATY OF NANKING AND THE SUPPLEMENTARY TREATY AT THE BOGUE, CHINA'S FIRST UNILATERAL TREATIES

The "Treaty of Peace, Friendship, and Commerce"<sup>3</sup> which brought the so-called "Opium War" to an end was concluded on August 29, 1842 on board the British frigate Cornwallis then at Nanking. In spirit as well as in letter, it was an unprecedented example of a

<sup>1</sup> Soothill: cit., p. 18.

<sup>2</sup> Williams: op. cit., Vol. II, p. 510.

<sup>3</sup> Customs Treaties: Vol. I, pp. 351-356.

unilateral treaty thrust upon China as a result of her military weakness. It was unilateral in the sense that in addition to the features of a peace treaty specified by the opening of five ports to the trade and residence of British subjects (art. 2), the cession of Hongkong (art. 3), the abolition of the co-hong (art. 4), a heavy indemnity of 21 million dollars (arts. 4-6), and a provision for equality of official intercourse (art. 11), it established the principle of a conventional tariff (art. 10).<sup>1</sup> So general was this agreement in its terms, however, that Mr. Morse considered it as a protocol rather than a treaty. For this reason a Supplementary Treaty<sup>2</sup> was concluded on October 8, 1843 which included, among other things, a unilateral and unqualified most-favored-nation clause (art. 8).<sup>3</sup> Into it were incorporated the General Regulations of July 22, 1843<sup>4</sup> first promulgated in Hongkong. These provided for a conventional tariff of five per cent *ad valorem*

<sup>1</sup> Art. 10 runs as follows: His Majesty the Emperor of China agrees to establish at all the Ports which are by the second article of this Treaty to be thrown open for the resort of British Merchants, a fair and regular Tariff of Export and Import Customs and other Dues, which Tariff shall be publicly notified and promulgated for general information, and the Emperor further engages, that when British Merchandise shall have once paid at any of the said Ports the regulated Customs and Dues agreeable to the Tariff, to be hereafter fixed, such Merchandise may be conveyed by Chinese Merchants, to any Province or City in the interior of the Empire of China on paying a further amount as Transit Duties which shall not exceed — per cent on the tariff value of such goods.

It was in pursuance of this article that the Tariff Schedule of July 22, 1843 was agreed upon.

<sup>2</sup> Customs Treaties, Vol. I, pp. 390-399.

<sup>3</sup> Art. 8 of the Supplementary Treaty reads: The Emperor of China having been graciously pleased to grant to all Foreign Countries whose subjects or citizens, having hitherto traded at Canton the privilege of resorting for purposes of Trade to the other four Ports of —, on the same terms as the English.

It is further agreed, that should the Emperor hereafter, from any cause whatever, be pleased to grant additional privileges or immunities to any of the subjects or citizens of such Foreign Countries, the same privileges and immunities will be extended to and enjoyed by British subjects; but it is to be understood that demands or requests are not, on this plea, to be unnecessarily brought forward.

<sup>4</sup> Customs Treaties, Vol. I, pp. 383-389.

and extraterritoriality (arts. 6 and 13).<sup>1</sup> Technically, the Treaty of Nanking and the Supplementary Treaty were two separate documents; in fact they were one instrument to all intents and purposes. The later simply supplemented the "deficiencies and omissions" of the former, which was primarily drawn to terminate the war. In this way the two conventions, characterized by three unilateral features, namely, a conventional tariff of five per cent *ad valorem*, a unilateral most-favored-nation clause, and extraterritorial rights, laid the foundation of European policy in China.

#### FIRST PERIOD OF CHINA'S UNILATERAL TREATIES, 1842-1857

No sooner had Great Britain concluded these two treaties with China than the United States followed suit. In response to the message of President John Tyler dated December 30, 1842, giving information as to the terms of the Nanking Treaty and recommending that an appropriation be made for the purpose of establishing commercial relations with the Chinese Empire, Congress authorized an appropriation of \$40,000 which was placed at his disposal for the execution of the proposed project. On May 8, 1843, Caleb Cushing, "a shrewd lawyer and plain-spoken man," was appointed Minister Plenipotentiary and Commissioner to China. He carried with him the instructions of Daniel Webster, then Secretary of State, to explain the friendly policy of the American Government and its desire of intercourse based on the principle of absolute equality, national honor and dignity,<sup>2</sup> and also a letter of the President,<sup>3</sup> addressed to the Chinese

<sup>1</sup> Art. 6 runs as follows: Goods, whatever imported into, or exported from, any one of the above-mentioned five ports, are henceforward to be fixed according to the Tariff as now fixed and agreed upon, and no further sums are to be levied beyond those which are specified in the Tariff. . . . Art. 13 reads: Regarding the punishment of English criminals, the English Government will enact the laws necessary to attain that end, and the Consul will be empowered to put them in force.

<sup>2</sup> Moore: Digest of International Law, Vol. V, pp. 416-417.

<sup>3</sup> Williams: op. cit., Vol. II, pp. 565-566.

MacNair: op. cit., p. 183.



Emperor, peculiarly adapted to Chinese psychology. On the basis of these instructions negotiations were carried on which were consummated in the Treaty of Wanghea or Wanghia,<sup>1</sup> signed on July 3, 1844. This agreement,<sup>2</sup> though much more detailed in content and in many respects different from the British Treaty, was, nevertheless, modelled after it. China suffered as before because of the stipulations providing for a conventional tariff, a unilateral and unequalled most-favored-nation clause and extraterritoriality.<sup>3</sup>

France was not slow in exacting a treaty from China. The Treaty of Whampoa<sup>4</sup> modelled on the American prototype and signed October 23, 1844 included all the unilateral features found in the other treaties.

In the next year Belgium acquired the right to trade through an imperial rescript dated July 25, 1845, which placed her on an equal footing with the other treaty powers.<sup>5</sup>

Neither did Sweden and Norway hesitate to obtain the same prerogatives. The Treaty of Canton,<sup>6</sup> a virtual reproduction of the American Treaty, concluded on March 20, 1847, was the result of their effort.

On April 4, 1846, a further convention was entered into between China and Great Britain at Bocca Tigris, a part of which related to the evacuation of the Chusan Island by the British forces. It was article 3,<sup>7</sup> cited below,

<sup>1</sup> Customs Treaties, Vol. I, pp. 677-698.

<sup>2</sup> For the essential features of the Treaty of Wanghea as characterized by Cushing see Morse, International Relations of the Chinese Empire, Vol. I, p. 330.

<sup>3</sup> Art. 2 of the Treaty providing for a conventional tariff of five per cent *ad valorem* and a unilateral most-favored-nation clause; arts. 21 and 25 extraterritorial rights. See Customs Treaties, Vol. I, pp. 677-685.

<sup>4</sup> Customs Treaties, Vol. I, pp. 771-799.

<sup>5</sup> Tyau: op. cit., p. 6.

Morse: op. cit., Vol. I, p. 332.

<sup>6</sup> Customs Treaties, Vol. II, pp. 45-79.

<sup>7</sup> Art. 3 reads: It is stipulated on the part of His Majesty the Emperor of China that, on the evacuation of Chusan by Her Britannic Majesty's forces, the said island shall never be ceded to any other foreign power. Art. 4 further provided for British protection of the island in case of hostile attack Customs Treaties, Vol. I, p. 401.

that originated the practice of spheres of influence in China.

Thus within a period of six years (1842-1847) no less than seven conventions had been concluded between China and the foreign Powers embracing altogether four unilateral features. That on the part of China these agreements were signed with reluctance is without question. It was only natural, therefore, that the Chinese attitude toward foreigners should be hostile and that the foreign Powers should experience difficulty in the enforcement of such treaties.

### SECOND PERIOD OF CHINA'S UNILATERAL TREATIES, 1858-1911

To cope with this situation Great Britain and other Powers determined to readjust their contractual relations with China. While the English treaties did not provide for modification as did the American and French treaties in their stipulation that revision was to take place at the expiration of twelve years, that is, in 1856, the operation of the most-favored-nation clause entitled her to enjoy the same privilege. Commissioner Yeh at Canton was first approached. But his stubborn resistance to treaty revision once more convinced the English that force was the only solution. In the meantime, two incidents developed which, like the seizure of opium on the previous occasion, were made the *casus belli*. One was the case of Chapdelaine,<sup>1</sup> a French missionary who, having been charged with the crime of instigating a rebellion against the government in Kwangsi, was convicted and sentenced to death by the local authority on February 29, 1856. Against this violation of extraterritorial right, the French chargé d'affaire lodged a protest. The other was the case of the lorcha *Arrow*,<sup>2</sup> a Chinese-owned

<sup>1</sup> Morse: op. cit., Vol. 1. p. 480.

<sup>2</sup> Ibid., p. 422.

and Hongkong-registered vessel, engaged in coastal trade but not infrequently in opium smuggling. It so happened that on October 8, 1856 it was boarded by Chinese soldiers and twelve of its crew were removed. The British authority, consisting the vessel a floating portion of British territory and the arrest an insult, instantly protested. It was discovered later, however, that the registration had expired eleven days before the incident. Since the vessel was no longer under British protection, the British assertion was unfounded. Nevertheless, the temptation to display military force was too strong for England and France to resist. They therefore made a combined attack upon China in the summer of 1857 as they had done three years before against Russia in the Crimea. China's fate was foredoomed. Again was a group of treaties imposed on her, derogatory of her sovereignty. These were the Treaties of Tientsin,<sup>1</sup> signed between June 13 and 26, by Russia,<sup>2</sup> the United States,<sup>3</sup> England and France. Owing to the most-favored-nation clause, the four Powers were equal in the enjoyment of their privileges in China. The English Treaty will therefore be taken as an example. In several respects, it was a revision of the old conventions that England had exacted from China, though it also introduced some new features such as the right of foreign missions to reside in Peking (art. 3), the protection of missionaries (art. 8), tariff revision at the end of ten

<sup>1</sup> For the English Treaty of Tientsin and the Rules of Trade and the Tariff see Customs Treaties, Vol. I, pp. 404-421, 422-428, 435-443.

The French Treaty and the Tariff, *ibid.*, pp. 814-839, 840-853.

The Russian Treaty, *ibid.*, pp. 85-91.

The American Treaty, *ibid.*, pp. 713-728; Additional Articles, pp. 729-735.

<sup>2</sup> By the Treaty of Aigun on May 16, 1858 the territory of the left bank of the Amur River was transferred to Russia. She also took away from China the maritime province east of the Ussuri River by the Treaty of Peking, Nov. 14, 1860 which also confirmed the Treaty of Tientsin concerning in particular the boundary as agreed upon by the Aigun Treaty.

<sup>3</sup> The ratification of the American Treaty of Tientsin was exchanged on Aug. 16, 1859.

years (art. 26) and the fixing of the transit duty at two and one half per cent *ad valorem* (art. 28, and Rules of Trade, arts. 7 and 10), half of the tariff rate. Extra-territoriality (arts. 15 and 16) and most-favored-nation treatment (art. 54) were explicitly provided because of the abrogation of the Trade Regulations of July 22, 1843 and the Supplementary Treaty of the same year. Six new ports were opened (arts. 10 and 11). Furthermore, a Supplementary Treaty was signed at Shanghai on November 8, 1858 regarding rules of trade and fixing the tariff rate at five per cent *ad valorem* with a free list.<sup>1</sup> The ratification of the English and French treaties due in 1859 was, however, deliberately evaded by the Peking court. This led to the renewal of hostilities and the conclusion of the Conventions of Peking with England and France in 1860<sup>2</sup> by which the Treaties of Tientsin were confirmed and Tientsin was opened to foreign trade.

Just as the Treaty of Nanking and the Supplementary Treaty at the Bogue had given rise to further conventions, so the four Treaties of Tientsin produced the same result.

The three decades following the English and French Conventions of Peking also witnessed the loss of China's dependencies: the western part of Ili to Russia, Annam and Tonkin to France, Burma and Sikkim to Great Britain, and Liuchiu Islands to Japan.<sup>3</sup>

Immediately after the Sino-Japanese War, 1894-5, three further conventions were entered into between China and Japan. By the Treaty of Shimonoseki,<sup>4</sup> April 17, 1895, the independence of Korea, a dependency of China, was recognized, and Formosa and the Pescadores were ceded to Japan. By the Treaty

<sup>1</sup> Revision was demanded because of the fall in value of various articles of merchandise, and the duties collected seemed to be in excess of the five per cent prescribed in the abrogated tariff schedule.

<sup>2</sup> English Convention of Peking, Customs Treaties, Vol. I, pp. 430-434.

<sup>3</sup> French Convention of Peking, *ibid.*, pp. 885-890.

<sup>4</sup> Bau: Foreign Relations of China, pp. 18-34.

<sup>5</sup> Customs Treaties, Vol. II, pp. 590-596.

of Commerce and Navigation, July 21, 1896, Japan was accorded privileges similar to those enjoyed by the western States.<sup>1</sup> The subsequent protocol of October 19, 1896 gave the Japanese Consul "full control over the roads and police affairs" in the Japanese concessions.<sup>2</sup>

Before the close of the century China's territorial integrity and political independence were further assaulted by the aggressive designs of the foreign Powers. Spheres of influence were created in different parts of the country: Great Britain laid claim to the Yangtse Valley, Tibet and Szechuan; France to Kwangtung, Kwangsi and Yunnan; Russia to North Manchuria and Outer Mongolia; Japan to South Manchuria and Inner Mongolia; and Germany to Shantung.<sup>3</sup> Most of these claims rested on the declarations of non-alienation made by the Chinese Government, which placed these Powers in a position of priority in economic matters in their respective spheres of influence. Occasionally they were also defined by inter-power agreements so as to avoid conflict of interests in the same region. In addition, a scramble for territorial leases and railway concessions was inaugurated. Germany started the game by seizing Kiaochow after two of her missionaries were murdered. It was leased to her for ninety-nine years by the Convention of March 6, 1898.<sup>4</sup> Immediately after, Port Arthur and Dairen (or Talienwan) were occupied by

<sup>1</sup> Customs Treaties, Vol. II, pp. 604-614.

<sup>2</sup> *Ibid.*, p. 615, art. 1.

<sup>3</sup> "The technical meaning of the term sphere of interest is an area or territory within which a nation claims the primary right of exploitation of commercial and natural resources. The term sphere of influence is by some thought to refer to a certain degree of political control, however slight it may be; but it is continually used interchangeably with sphere of interest. . . . It signifies a portion of territory wherein a nation has expressly or impliedly declared that it will permit no other nation to exert political influence, and that itself will lead in the exploitation of natural resources." Reinsch *World Politics at the End of the Nineteenth Century*, pp. 113-114.

<sup>4</sup> Customs Treaties, Vol. II, pp. 208-214.

MacMurray: *Treaties and Agreements with and Concerning China*, 1898/4.

Russia, and by the Convention of March 27, 1898,<sup>1</sup> they were leased to her for twenty-five years with the privilege of the renewal. By the Convention of May 27, 1898<sup>2</sup> France was granted the lease of Kwangchowwan. By the exchange of notes of April 9 and 10,<sup>3</sup> a French representative was to be appointed as the head of the Chinese Post Office Staff. Driven by the force of circumstances, Great Britain first secured the lease of Kowloon, Mires Bay, and Deep Bay by the Convention of June 9, 1898<sup>4</sup> and then of Weihaiwei by the Convention of July 1st of the same year.<sup>5</sup> She also gained the concession that so long as British trade in China predominated, the Inspector General of the Maritime Customs should be a British subject.<sup>6</sup>

In close connection with the territorial leases were the railway concessions<sup>7</sup> made then and afterwards. As a compensation for the services that she rendered to China in the Liaotung affairs,<sup>8</sup> Russia, by the Convention of September 8, 1896, was given the privilege of constructing a railway across North Manchuria leading to Vladivostok. Later, by the lease Convention of March 27, 1898, the right of extending the line to a point in the Liaotung Peninsula was also granted to her. By the Convention of June 20, 1895 France secured the right of extending the Annam Railway into Chinese territory. The right of constructing two

<sup>1</sup> Customs Treaties, Vol. II, pp. 219-222.

MacMurray: op. cit., 1898/5.

<sup>2</sup> Ibid., 1898/10.

<sup>3</sup> Ibid., 1898/7.

<sup>4</sup> Ibid., 1898/11.

<sup>5</sup> Ibid., 1898/14.

<sup>6</sup> Ibid., 1898/2.

<sup>7</sup> Bau: op. cit., pp. 44-45.

Reinsch: op. cit., pp. 114-138.

Though railway concessions granted are limited to the right of constructing and exploiting the lines (the Russian lines are the exception) as was stated by Reinsch, the political significance of these lines cannot be ignored by the territorial sovereign as they are strategical in character.

<sup>8</sup> According to the peace treaty of 1895 China was to cede to Japan the Liaotung Peninsula. Because of the intervention of Russia, Germany and France, an additional indemnity of 30,000,000 kuping taels were to be paid to Japan in place of the cession.

railways in Shantung was granted to Germany by the Lease Convention of March 6, 1898. Belgium obtained the concession for the Peking-Hankow line. The concessions for the construction of the Peking-Newchwang, the southern section of the Tientsin-Pukow, the Shanghai-Nanking, the Pukow-Sinyang, the Soochow-Hangchow-Ningpo, the Kowloon-Canton Railway and for the extension of the Burmese Railway as far as the Yangtse Valley were granted to Great Britain. The American Development Company procured the concession for the Canton-Hankow Railway. The Concession for the Chengting-Taiyuàn went to Russia, that for Lungchow-Nanning and the Pakhoi-Nanning to France, and that for the northern section of the Tientsin-Pukow Railway to Germany.

Against this economic and political exploitation rose up the Boxers with the slogan of "support the Ts'ing (the Manchu Dynasty) and exterminate the foreigners." Lacking in leadership and organization and characterized by ignorance, the movement, though patriotic in its motive, proved a failure. What was worse, it brought into existence the Protocol of September 7, 1901,<sup>1</sup> which established the right of an exclusive legation quarter with its permanent guard in Peking and of the maintenance of foreign troops between the capital and the sea.

By reviewing the unilateral treaties concluded in this period it is to be noted that the scope of privileges enjoyed by the foreign Powers was very much enlarged. The Consul was given the right to sit with the Chinese authority in the trial of cases in which Chinese were defendants and foreigners plaintiffs, not only in the open ports but also in the interior.<sup>2</sup> Moreover, the arrest of Chinese offenders taking refuge in the houses

<sup>1</sup> MacMurray: *op. cit.*, 1901/3.

<sup>2</sup> Art. 17 of the English Treaty of Tientsin, section 2 art. 3 of the Chefoo Convention of 1876, art. 28 of the American Treaty of Tientsin, art. 35 of the French Treaty of Tientsin, etc.

of foreigners or on board of their vessels at the open ports could not be effected without previous notice to the foreign authorities, usually the Consuls.<sup>1</sup> Transit dues were fixed at the rate of two and one half per cent *ad valorem*. Inland waters were made navigable by both foreign merchantmen and warships.<sup>2</sup> Dependencies were taken away from China. Railway concessions, sometimes including mining privileges, were granted to foreign corporations. Disguised cessions in the form of leases were effected. The right of administration of the concessions and settlements, areas reserved for the trade and residence of foreigners, was lost to the territorial sovereign. Even judicial rights over Chinese in these areas were limited. The stationing of foreign troops in Chinese territory was also provided for.

### THIRD PERIOD OF CHINA'S UNILATERAL TREATIES, 1911-1918

The third period opens with the Revolution of 1911, aiming at the overthrow of the Manchu regime, which was responsible for the conclusion of China's unilateral treaties and at the establishment of a democracy. Both constitutionally and diplomatically, however, the Revolution failed to accomplish its purpose. The dissolution of the Parliament by President Yuan Shih-kai, which was not sanctioned by the Provisional Constitution, had given rise to continuous civil strife which prevented the realization of China's hope of treaty readjustment. Worst of all, the monarchical

<sup>1</sup> Art. 21 of the English Treaty of Tientsin, art. 32 of the French Treaty of Tientsin, art. 18 of the American Treaty of Tientsin, etc.   §

<sup>2</sup> Art. 10 of the English Treaty of Tientsin runs as follows: British ships shall have authority to trade upon the Great River (Yangtze). . . . As soon as peace shall have been restored, British vessels shall also be admitted to trade at such ports as far as Hankow. . . . Art. 52 reads: British ships of war coming for no hostile purpose or being engaged in the pursuit of pirates shall be at liberty to visit all ports within the dominions of the Emperor of China. . . . Art. 30 of the American Treaty of Tientsin and art. 29 of the French Treaty of Tientsin made similar provisions.



movement following this unconstitutional action brought on the presentation by Japan of the notorious Twenty-One Demands at a time when Europe was deeply absorbed in the Great War. Regardless of the validity of these demands the conditions under which they were presented deserve special attention. On August 23, 1914 Japan declared war against Germany. On September 3, her troops landed at Lungkow, a place about 150 miles from Kiaochow, the German leased territory, in violation of China's neutrality. In fear that her neutrality might be further violated by the military operations of the Japanese troops, the Chinese Government created on the same day a war zone, intending to limit all warlike activities to this prescribed area. Against this war zone the Japanese Government protested. On September 7 Tsingtao was captured. On October 6 the Japanese seized the Kiaochow-Tsinan Railway station and soon after took over the mining properties as well, virtually treating Shantung as a conquered province. Since Tsingtao had been captured and therefore there was no longer any need for military action, the Chinese Government abrogated the war zone on January 7, 1915. Considering this action as an "indication of want of international faith and of unfriendliness," the Japanese Minister, Hioeki, to the surprise of the Chinese Government, presented directly to the Chinese President the Twenty-One Demands on January 18, 1915.

Up to May 7, when Japan presented to China the ultimatum urging the acceptance of the demands, twenty-five conferences had been held. The negotiations finally resulted in two treaties and thirteen exchanges of notes,<sup>1</sup> signed on May 25, 1915, concerning the transference of German rights in Shantung to Japan, the extension to ninety-nine years of the lease of Port Arthur and Dairen, the South Manchuria

<sup>1</sup> MacMurray: op. cit., 1915/8.

Railway, and the Antung-Mukden Railway, the right to lease and own land, to open mines and to engage in business, manufacturing and agricultural enterprises in South Manchuria, joint partnership in the Hanyehping Company, and the declaration of non-alienation of the coast of China. The original fifth group, regarding the employment of Japanese advisers, the purchase of a certain amount of munitions from Japan, the joint administration by Japanese and Chinese of the police at important places in China, the right to own land by Japanese hospitals, schools and churches in the interior of China, etc. was rejected and was postponed for future negotiation.

During this period Chile and Switzerland secured their extraterritorial rights by the Treaty of February 18, 1915<sup>1</sup> and of June 13, 1918<sup>2</sup> respectively. In addition, certain minor railway concessions were granted to other Powers.<sup>3</sup>

#### THE WASHINGTON CONFERENCE <sup>4</sup>

Then to the other direction swung the pendulum. In November 1921 there was assembled in Washington a Conference for the limitation of armaments and for the discussion of Far Eastern affairs, which was participated in by nine Powers, namely, the United States of America, Belgium, the British Empire, China, France, Italy, Japan, the Netherlands and Portugal. Being a check upon the aggression of Japan which claimed "special interests" in China under the pretext of territorial propinquity, the Conference constituted a landmark of China's diplomatic history. For the first time a policy of positive good will to China, embodied in the Root Resolutions, was adopted. The

<sup>1</sup> MacMurray: *op. cit.*, 1915/2.

<sup>2</sup> *Ibid.*, 1918/8.

<sup>3</sup> Bau: *op. cit.*, pp. 68-69.

<sup>4</sup> For the proceedings of the Washington Conference see Willoughby, China at the Conference.

signatories undertook "(1) to respect the sovereignty, the independence and the territorial and administrative integrity of China, "(2) to provide the fullest and most unembarrassed opportunity to China to develop and maintain for herself an effective and stable government, "(3) to use their influence for the purpose of effectually establishing and maintaining the principle of equal opportunity for the commerce and industry of all nations throughout the territory of China, "(4) to refrain from taking advantage of the present conditions in China, in order to seek special rights or privileges which would abridge the rights of the subjects or citizens of friendly States and from countenancing action inimical to the security of such States." A tariff revision was to be made so that an effective five per cent *ad valorem* upon imports might be collected by the Chinese Government. Upon the recommendation of a Special Conference China might levy a surtax of two and one half per cent *ad valorem* and in the case of luxuries, five per cent *ad valorem*. A Commission on Extraterritoriality was to be appointed, which was to investigate into the judicial conditions in China with a view to the relinquishment, gradually or otherwise, of the extraterritorial system. Foreign post offices, which had been established by tolerance rather than by treaties, were to be abolished at the end of 1922. Radio stations, installed without the consent of the Chinese Government, were to be removed or transferred to China upon fair and full compensation. All treaties, conventions, exchanges of notes, and other agreements with or concerning China were to be made public. Great Britain expressed her readiness to return Weihaiwei to China and France to enter into negotiations with China for the return of Kwangchowwan. Spheres of influence were declared to be things of the past. China's neutrality should be respected in future wars. Kiaochow, former German leased territory, was to be restored to China.

So should the Kiaochow-Tsinan Railway upon the payment of 53,406,141 gold marks plus the amount which Japan had expended for permanent improvements.

### THE NATIONALIST MOVEMENT FOR TREATY REVISION

No matter what she had gained at the Washington Conference, China could not be satisfied so long as extraterritoriality, tariff restrictions, the stationing of foreign troops on her soil, leased territories, spheres of influence, concessions and settlements, etc. remained operative. Although the failure of China to establish a government to which the whole nation would render obedience is blamed for the continued existence of her unilateral treaties, the unwillingness of the foreign Powers to relinquish them must be considered as the chief reason. Hence the manifesto of the First National Congress of the Kuomintang in 1924, the political will of Dr. Sun Yat-sen in the year following, and the northern expedition inaugurated in 1926. They represent a movement which, in its external aspect, aims at the liberation of China from the unreasonable contractual obligations imposed on her by military force. The movement, though not entirely successful, has produced distinctive results. The retrocession of the Belgian concession in Tientsin (1929), the British concessions in Hankow, Kiukiang (1927), Chinkiang (1929) and Amoy (1930), the restoration of the British leased territory in Weihaiwei (1930), the conclusion of the Tariff Treaties with the United States, Germany, Norway, Belgium, Italy, Denmark, Netherlands, Portugal, Great Britain, Sweden, France, Spain (1928) and Japan (1930), and the Treaties of Amity and Commerce with Poland (1929) and Czechoslovakia (1930), and the preliminary Treaty of Amity with Greece (1929) are the outstanding achievements of the

movement. After the conclusion of the Tariff Treaties, which recognized China's right to tariff autonomy, a new tariff schedule was put into effect in February, 1929. Negotiations concerning extraterritoriality have been carried on since the recovery of tariff autonomy but are suspended owing to the Manchurian affair. It is to be noted, however, that the new Tariff Treaties with Italy, Belgium, Portugal, Spain and Denmark also embody clauses for the abolition of extraterritoriality under certain conditions.

### THE MANCHURIAN QUESTION

#### (a) *China and Manchuria*

Probably the most serious question with which the world in general and China in particular are confronted to-day is the one concerning Manchuria. Since the founding of the Manchu Dynasty in 1644, Manchuria has been an integral part of China, which fact has never been disputed. Manchuria covers an area of about 384,000 square miles and is the home of thirty millions of Chinese. Its soya beans, coal fields, forests, and iron ores make it a valuable possession from the economic standpoint. Strategically it also constitutes China's "first line of defense." The domination of Manchuria by any foreign Power would therefore not only impede China's industrial development but also threaten her national existence.

#### (b) *Russia and Japan in Manchuria*

At the conclusion of the Sino-Japanese War in 1895, Japan attempted to seize the Liaotung Peninsula. She might have succeeded, had it not been for the tripartite intervention of Russia, Germany and France. But for the relinquishment of this claim she received from China an additional indemnity of thirty million kuping taels. In 1898 Russia came upon the scene

by securing the lease for a term of twenty-five years of Port Arthur and Dairen (the Liaotung Peninsula). In addition she was permitted to construct a railway through Manchuria, known as the Chinese Eastern Railway. Under the pretext of protecting her nationals during the Boxer trouble in 1900, she held Manchuria under military occupation and endeavored to make it her protectorate. It was only when pressure was brought to bear upon her by England, the United States, Germany and Japan that she gave up her aggressive design. But she still regarded Manchuria as her sphere of influence. Thus she unavoidably came into conflict with Japan, who cherished no less an ambition in Manchuria. Force was resorted to, and at no small sacrifice Japan won the victory. The Russo-Japanese War of 1904-5 was fought on Chinese soil, in violation of China's neutrality. It materially changed the situation in the Far East. The Russian leased territory was transferred to Japan. Likewise the southern branch of the Chinese Eastern Railway from Changchun to Port Arthur, later known as the South Manchuria Railway.

(c) *Japan's So-Called Treaty Rights*

Japan came out of the war as the champion of justice and the protector of weaker nations. She declared to the world that she had saved Manchuria from falling into the hands of Russia, and on that ground she claimed "special interests" in that region, entirely ignoring the facts that the war was fought on her own initiative and that Manchuria is Chinese territory.

Japan was in the habit of condemning Russia as an aggressor, but she has proved herself even more aggressive. Not satisfied with the privileges that Russia enjoyed before 1905, she presented to China the infamous Twenty-One Demands in 1915. Knowing that a united and strong China might prevent her from

carrying out her policy of exploitation, economic and political, she loaned money to the notorious Chinese militarists with a motive of prolonging and instigating civil wars, contrary to the will of the Chinese people. The Nishihara loans are the outstanding examples. In spite of their notorious character the National Government has not repudiated them. While the Nationalist troops were advancing northward in the spring of 1928, the Japanese Government under Baron Tanaka issued the following statement, indicating its readiness to intervene:

"The Japanese Government attaches the utmost importance to the maintenance of peace and order in Manchuria, and is prepared to do all it can to prevent the occurrence of any such state of affairs as may disturb that peace and order, or constitute the probable cause of such disturbance.

"In these circumstances, should disturbances develop further in the direction of Peking and Tientsin, and the situation become so menacing as to threaten the peace and order of Manchuria, Japan may possibly be constrained to take appropriate effective steps for the maintenance of peace and order in Manchuria."

On the basis of the minutes of the Peking Conference, December, 1905,<sup>1</sup> Japan has prevented China and other Powers from constructing any railway "in the neighborhood of" and "parallel to" the South Manchuria Railway, although no stipulation of this kind can be found in any formal agreement. Interpreting in her own way the clause in the Russo-Chinese Agreement of 1896, which gave the railway company "absolute and exclusive administration of its lands," Japan has vested in the South Manchuria Railway

<sup>1</sup> The alleged treaty stipulation runs as follows: The Chinese Government engage, for the purpose of protecting the interests of the South Manchuria Railway, not to construct prior to the recovery by them of the said railway, any main line in the neighborhood of and parallel to that railway, or any branch line which might be prejudicial to the interests of the above-mentioned railway.

Company the power to acquire land and to levy taxes in the railway zone, which ordinarily belongs to a municipal government. Citing article 11 on the Additional Agreement of December, 1905,<sup>1</sup> which is a part of the Sino-Japanese Treaty of Peking, Japan has refused to withdraw her railway guards, although Russia did so long ago. Departing from the usual operation of the extraterritorial system, Japan maintains consular police in all the Japanese consulates and branch consulates in Manchuria, declaring that this right flows from the right of extraterritoriality.

These and other things have accentuated ill feeling between the two countries. That Japan's so-called treaty rights, the rights based on the Treaties and Notes of 1915 for instance, run contradictory to the principle adopted at the Washington Conference is beyond question. Her interpretation of treaties to suit her own purposes has made matters worse. Her free action in Manchuria has violated the administrative and territorial integrity of China. Her sudden attack on Mukden on the night of September 18, 1931, followed by the capture of the same and of other important places in Manchuria on the ground of "self-defense" was but an expression of the "positive policy" of Baron Tanaka and his associates and was, as all neutral observers agree, premeditated. Her undeclared war at Shanghai beginning January 28, 1932 was contrary to the practice of nations and was unjustifiable from the standpoint of international law and morality. Her recognition of a "Manchukuo" was an act of intervention in China's internal politics and

<sup>1</sup> Art. 11 reads: In view of the earnest desire expressed by the Imperial Chinese Government to have the Japanese and Russian troops and railway guards in Manchuria withdrawn as soon as possible, and in order to meet this desire, the Imperial Japanese Government, in the event of Russia agreeing to the withdrawal of her railway guards, or in case other proper measures are agreed to between China and Russia, consent to take similar steps accordingly. When tranquillity shall have been reestablished in Manchuria and China shall have become herself capable of affording full protection to the lives and property of foreigners, Japan will withdraw her railway guards simultaneously with Russia.



a deliberate plan to put Manchuria under her rule if not to annex it. The military action of Japan, in the words of Japanese militarists, is to teach China a lesson, to teach her that her treaties with Japan must be observed, no matter what is their nature. Japan has accused China of violating treaties. But has Japan ever considered the Nine-Power Treaty, the Paris Pact, and the Covenant of the League of Nations? Are they to be regarded as mere scraps of paper?

Japanese writers on the Japanese Government are in the habit of comparing their Government with that of Great Britain. One point of difference deserves mention: in Britain the Government is controlled by a genuine public opinion—the electorate; in Japan the Government is directed and controlled by a handful of militarists.



# APPENDIX I

## CONSTITUTIONAL DOCUMENTS UNDER THE MANCHU REGIME

### THE PRINCIPLES OF THE CONSTITUTION <sup>1</sup>

#### SOVEREIGNTY OF THE EMPEROR

1. The Tach'ing Dynasty shall rule over the Tach'ing Empire forever and ever, and be honored through all ages.
2. The Emperor's person is sacred and inviolable.
3. The Emperor alone has power to make laws, and to decide what matters shall be placed before Parliament for discussion.
4. The Emperor shall convoke, inaugurate, open and close, prorogue and suspend Parliament.
5. The Emperor alone has power to appoint all officials, to fix their salaries, and to promote or dismiss them.
6. The Emperor is the Commander-in-Chief of the Army and Navy, and makes laws and regulations for both forces.
7. The Emperor declares war, makes peace, concludes treaties, appoints Ministers abroad, and receives foreign Ministers in China.
8. At any time, if circumstances require it, he can issue Edicts restricting the liberty of his subjects.
9. The Emperor confers all ranks and distinctions, and issues Edicts of amnesty.
10. The Emperor has sole power to exercise the law, and to establish Courts and appoint judges; his Edicts may supplement laws from time to time.
11. The Emperor has power to issue ordinances within the limit of the law.
12. In time of emergency, when Parliament is not in session the Emperor may issue Edicts for the purpose of

<sup>1</sup> *China Year Book 1912*, pp. 359-361.

carrying on the Government, and for raising the necessary funds; these measures must, however, be submitted to Parliament when it next assembles.

13. The expenses of the Royal Household shall be fixed by the Emperor, and obtained direct from the Treasury; Parliament may not interfere therewith.
14. The Emperor has sole control over Imperial Ceremonies, whether he conducts them in person or deputed Imperial Clansmen or specially appointed officials to do so; Parliament cannot interfere.

#### THE DUTIES AND PRIVILEGES OF SUBJECTS

1. Any subject having the necessary qualifications prescribed by law is eligible for civil and military appointments, and for membership of Parliament.
2. Subjects are free to make speeches, write and publish books or newspapers, and meet and form societies, within the limits of the law.
3. Subjects cannot be imprisoned or punished except according to law.
4. Subjects charged with infractions of the law have the right of trial by competent judges.
5. Only Courts properly established, according to law, are competent to deal with cases.
6. Subjects' property and residences cannot be interfered without due legal reason.
7. Subjects are bound by law to pay taxes and perform military service.
8. Unless and until the present taxation is altered, subjects are bound to pay the taxes at present in force.
9. Subjects are bound to obey the laws of the nation.

#### PRINCIPLES OF PARLIAMENTARY LAW

1. Parliament has the power to propose legislation, but not the power to legislate.
2. Measures adopted by Parliament have not the force of law, and are not to be carried out, until they have received Imperial sanction.
3. Parliament can only deliberate upon matters affecting the whole nation; matters affecting a single province are not within its scope.

4. Regular expenditure, authorized by the Emperor, and expenditure already fixed by law, shall not be abolished or reduced except in consultation with the Government.
5. Parliament may assist in compiling the Empire's Budget.
6. If any administrative Minister do anything contrary to law, Parliament may denounce him to the Throne. The power of dealing with such Ministers is in the hands of the Emperor, and Parliament may not interfere with his sovereignty.
7. Matters discussed in Parliament must be passed by both Houses before they can be memorialized to the Throne for its sanction.
8. When the Upper House has any matter to memorialize the Throne, it shall do so through its President.
9. Members of Parliament may not use disrespectful language concerning the Court, or abuse other persons. Breaches of this rule will be punished.
10. During the sessions of Parliament the President has power to maintain order in the House, and can order anyone committing a breach of Parliamentary rules to desist from speaking, or to retire from the House.
11. Any member of Parliament found by the President to be unqualified or unfit for membership, may be struck off the roll.
12. Political societies formed by gentry and scholars in the provinces are allowed, but they shall not collect money or indulge in other improper practices, or interfere with local affairs.

#### PRINCIPLES OF ELECTIONS

1. All elections for Parliament shall be supervised by the local authorities.
2. Persons unfitted for the franchise shall not be permitted to vote. (Such persons are described as those who have been imprisoned, are engaged in a disreputable calling, have embezzled money, are opium smokers, are mentally afflicted, come from impure family, or are unable to read and write.)
3. At the date of the election special officers will be appointed by the Governor to supervise it, especially the opening of the ballot-box.

4. Any one committing a breach of election regulations shall be punished by special penalties, such as fine or imprisonment.
5. All elections shall be by vote, and the candidate receiving the largest number of votes is elected.
6. Residence in the neighborhood for at least a year is necessary to obtain the right to vote.

### THE NINETEEN ARTICLES<sup>1</sup>

- I. The Tach'ing Dynasty shall reign forever.
- II. The person of the Emperor shall be inviolable.
- III. The power of the Emperor shall be limited by a Constitution.
- IV. The order of the succession shall be prescribed in the Constitution.
- V. The Constitution shall be drawn up and adopted by the Tze-cheng-yuan and promulgated by the Emperor.
- VI. The power of amending the Constitution belongs to Parliament.
- VII. The members of the Upper House shall be elected by the people from among those particularly eligible for the position.
- VIII. Parliament shall elect and the Emperor shall appoint the Premier, who will recommend the other members of the Cabinet, these also being appointed by the Emperor. The Imperial Princes shall be ineligible as Premier, Cabinet Ministers, or administrative heads of provinces.
- IX. If the Premier, on being impeached by Parliament, does not dissolve Parliament, he must resign, but one Cabinet shall not be allowed to dissolve Parliament more than once.
- X. The Emperor shall assume direct control of the Army and Navy, but when that power is used with regard to internal affairs he must observe special conditions to be decided by Parliament, otherwise he is prohibited from exercising such power.
- XI. Imperial decrees cannot be made to replace the law except in the event of immediate necessity, in which case decrees in the nature of a law may be issued in accordance

<sup>1</sup> *China Year Book 1912*, pp. xxiii, xxiv.

with special conditions, but only when they are in connection with the execution of a law or what has by law been delegated.

XII. International treaties shall not be concluded without the consent of Parliament, but the conclusion of peace or a declaration of war may be made by the Emperor if Parliament is not sitting, the approval of Parliament to be obtained afterwards.

XIII. Ordinances in connection with the Administration shall be settled by Acts of Parliament.

XIV. In case the Budget fails to receive the approval of Parliament, the Government cannot act upon the previous year's Budget, nor may items of expenditure not provided for in the Budget, be appended to it. Further, the Government shall not be allowed to adopt extraordinary financial measures outside the Budget.

XV. Parliament shall fix the expenses of the Imperial Household and any increase or decrease therein.

XVI. Regulations in connection with the Imperial Family must not conflict with the Constitution.

XVII. The two Houses shall establish the machinery of an administrative Court.

XVIII. The Emperor shall promulgate the decisions of Parliament.

XIX. The Tze-cheng-yuan shall act upon Articles VIII, IX, X, XII, XIII, XIV, XV, and XVIII until the opening of Parliament.

## APPENDIX II

### THE PROVISIONAL CONSTITUTION

#### I. GENERAL PROVISIONS

*Art. 1.* The Republic of China is established by the Chinese people.

*Art. 2.* The sovereignty of the Chinese Republic is vested in the whole body of the people.

*Art. 3.* The territory of the Chinese Republic consists of the Twenty-Two Provinces, Inner and Outer Mongolia, Tibet and Ch'inghai (Kokonor).

*Art. 4.* The sovereignty of the Chinese Republic is exercised by the National Council, the Provisional President, the Cabinet, and the Judiciary.

#### II. CITIZENS

*Art. 5.* Citizens of the Chinese Republic are all equal, and there shall be no racial class or religious distinctions.

*Art. 6.* Citizens shall enjoy the following rights:

1. No citizen shall be arrested, imprisoned, tried or punished except in accordance with law.
2. The habitation of any citizen shall not be entered or searched except in accordance with law.
3. Citizens shall enjoy the right of the security of their property and the freedom of trade.
4. Citizens shall have the freedom of speech, of publication, of association.
5. Citizens shall have the right of the secrecy of their letters.
6. Citizens shall have the liberty of residence and removal.
7. Citizens shall have the freedom of religion.

*Art. 7.* Citizens shall have the right to petition Parliament.



*Art. 8.* Citizens shall have the right of petitioning the executive officials.

*Art. 9.* Citizens shall have the right to institute proceedings before the Judiciary, and to receive trial and judgement.

*Art. 10.* Citizens shall have the right of suing officials in the Administrative Courts for violation of the law or of their rights.

*Art. 11.* Citizens shall have the right of participating in examinations for official posts.

*Art. 12.* Citizens shall have the right to vote and of standing for election to representative assemblies.

*Art. 13.* Citizens shall have the duty of paying taxes according to law.

*Art. 14.* Citizens shall have the duty of enlisting<sup>2</sup> as soldiers according to law.

*Art. 15.* The rights of citizens as provided in the present chapter shall be limited or modified by laws, provided such limitation or modification shall be deemed necessary for the promotion of public welfare, for the maintenance of public order, or upon other urgent necessity.

### III. THE NATIONAL COUNCIL (Ts'AN-YI-YUAN)

*Art. 16.* The legislative power of the Chinese Republic is exercised by the National Council.

*Art. 17.* The National Council shall be composed of members elected by the several districts as provided in *Art. 18*.

*Art. 18.* The Provinces, Inner and Outer Mongolia, and Tibet shall each elect and depute five members to the National Council, and Ch'inghai (Kokonor) shall elect one member.

The electoral districts and methods of election shall be decided by the localities concerned.

During the meeting of the National Council each member shall have one vote.

*Art. 19.* The National Council shall have the following powers:

1. To pass all laws.
2. To pass the budgets of the Provisional Government.
3. To pass measures of taxation, of currency, and of weights and measures for the whole country.

4. To pass measures for the incurring of public loans and to conclude agreements affecting the National Treasury.
5. To give consent to matters provided in *Arts. 34, 35, and 40*.
6. To reply to inquiries from the Provisional Government.
7. To receive and consider petitions of citizens.
8. To make suggestions to the Government on laws or other matters.
9. To introduce interpellations to the members of the Cabinet and to insist on their being present in the Council in making replies thereto.
10. To insist on government investigation into any alleged bribery and infringement of laws by officials.
11. To impeach the Provisional President, if he be held to have acted as a traitor by a majority vote of three fourths of the members present with a quorum of more than four-fifths of the total number of members.
12. To impeach any member of the Cabinet, if he be held to have failed to perform his official duties or to have violated the law by a majority vote of two thirds of the members present with a quorum of over three fourths of the total number of members.

*Art. 20.* The National Council may itself convoke, conduct, and adjourn its own meetings.

*Art. 21.* The meetings of the National Council shall be conducted publicly, but meetings may be held *in camera* at the demand of any member of the Cabinet or of a majority vote.

*Art. 22.* Matters passed by the National Council shall be communicated to the Provisional President for promulgation and execution.

*Art. 23.* If the Provisional President should veto matters passed by the National Council, he shall, within ten days after he receives such resolutions, return the same with stated reasons to the Council for reconsideration. If the same matter should

again be passed by a two-third vote of the Council, it shall be dealt with in accordance with *Art. 22*.

*Art. 24.* The President of the National Council shall be elected by open ballot of the voting members, and the one who receives more than one half of the total number of the votes cast shall be elected.

*Art. 25.* Members of the National Council shall not, outside the Council hall, be responsible for their opinions expressed and votes cast in the Council.

*Art. 26.* Members of the Council shall not be arrested without the permission of the President of the Council except for flagrant offenses or during internal disturbance or foreign invasion.

*Art. 27.* The procedure of the National Council shall be decided by its own members.

*Art. 28.* The National Council shall be dissolved on the day of the convocation of the National Assembly, and its powers shall be exercised by the latter.

#### IV. THE PROVISIONAL PRESIDENT AND VICE-PRESIDENT

*Art. 29.* The Provisional President and Vice-President shall be elected by the National Council, by vote of two thirds of the members present at a sitting of the Council consisting of over three fourths of the total number of members.

*Art. 30.* The Provisional President represents the Provisional Government as the fountain of all executive powers and promulgates all laws.

*Art. 31.* The Provisional President may issue or cause to be issued orders for the execution of laws and of powers delegated to him by the law.

*Art. 32.* The Provisional President shall be the Commander-in-Chief of the army and navy of the whole of China.

*Art. 33.* The Provisional President shall ordain and establish the administrative system and official regulations, but he must first submit them to the National Council for its approval.

*Art. 34.* The Provisional President shall appoint and remove civil and military officials, but in the appointment of members of the Cabinet, Ambassadors, and Ministers, he must have the concurrence of the National Council.

*Art. 35.* The Provisional President shall have power, with the concurrence of the National Council, to declare war and conclude treaties.

*Art. 36.* The Provisional President may, in accordance with law, declare a state of siege.

*Art. 37.* The Provisional President shall, representing the whole country, receive Ambassadors and Ministers of foreign countries.

*Art. 38.* The Provisional President may introduce bills into the National Council.

*Art. 39.* The Provisional President may confer decorations and other insignia of honor.

*Art. 40.* The Provisional President may declare general amnesty, grant special pardon, commute a punishment, and restore rights, but in the case of a general amnesty, he must have the concurrence of the National Council.

*Art. 41.* In case the Provisional President is impeached by the National Council, he shall be tried by a special court consisting of nine judges elected among the justices of the Supreme Court of the realm.

*Art. 42.* If the Provisional President vacates his office for any cause, or is unable to discharge the powers and duties of the said office, the Provisional Vice-President shall take his place.

## V. MINISTERS OF STATE

*Art. 43.* The Premier and the heads of the Government Departments shall be called Ministers.

*Art. 44.* Ministers of State shall assist the Provisional President in assuming responsibilities.

*Art. 45.* Ministers of State shall countersign all bills introduced by the Provisional President and all laws and orders issued by him.

*Art. 46.* Ministers of State and their deputies may be present and speak in the National Council.

*Art. 47.* If any Minister of State is impeached by the National Council, the Provisional President may remove him from office, but such removal shall be subject to the reconsideration of the National Council.

## VI. COURTS OF JUSTICE

*Art. 48.* The Judiciary shall be composed of judges appointed by the Provisional President and the Minister of Justice.

The organization of the courts and the qualifications of judges shall be determined by law.

*Art. 49.* The Judiciary shall try civil and criminal cases, but cases involving administrative affairs or arising from other particular causes shall be dealt with according to special laws.

*Art. 50.* The trial of cases in the law courts shall be conducted publicly, but those affecting public safety and order may be held *in camera*.

*Art. 51.* Judges shall be independent, and shall not be subject to the interference of higher officials.

*Art. 52.* Judges during their continuance of office shall not have their emoluments decreased and shall not be transferred to other offices, nor shall they be removed from office except when they are convicted of crimes, or of offenses punishable according to law by removal from office.

Regulations for the punishment of judges shall be determined by law.

## VII. ANNEX

*Art. 53.* Within ten months after the promulgation of this Provisional Constitution the Provisional President shall convene a National Assembly, the organization of which and the laws for the election of whose members shall be decided by the National Council.

*Art. 54.* The Constitution of the Republic of China shall be adopted by the National Assembly, but before the promulgation of the Constitution the Provisional Constitution shall have the same force as the Constitution itself.

*Art. 55.* The Provisional Constitution may be amended by the assent of three fourths of the members of the National Council present at a quorum of two thirds of the whole number; or upon the application of the Provisional President by a majority vote of three fourths at a quorum of the Council of four fifths of the total number of its members.

*Art. 56.* The present Provisional Constitution shall take effect on the date of its promulgation, and the fundamental articles for the organization of the Provisional Government shall cease to be effective on the same date.

## APPENDIX III<sup>1</sup>

### THE CONSTITUTIONAL COMPACT

THE AMENDED PROVISIONAL CONSTITUTION OF THE  
REPUBLIC OF CHINA PROMULGATED ON MAY 1, 1914

#### CHAPTER I. THE NATION

*Art. 1.* The Chung Hua Min Kuo is composed of the citizens of Chung Hua.

*Art. 2.* The sovereignty of the Chung Hua Min Kuo originates in the whole body of the citizens.

*Art. 3.* The territory of the Chung Hua Min Kuo continues the same as that of the former Empire.

#### CHAPTER II. THE CITIZENS

*Art. 4.* Citizens of the Chung Hua Min Kuo shall be equal before the law, irrespective of race, rank, or religion.

*Art. 5.* Citizens shall enjoy the following rights:

1. No citizen shall be arrested, imprisoned, tried, or punished, except in accordance with statute.
2. The habitation of any citizen shall not be forcibly entered into or searched, except in accordance with statute.
3. Within the limits of the statutes citizens shall have the right to own and enjoy property and to trade freely.
4. Within the limits of the statutes citizens shall have the rights of freedom of speech, of writing and publication, and of assembly and association.
5. Within the limits of the statutes citizens shall have the right of secrecy of correspondence.

<sup>1</sup> It is also known as the Revised Provisional Constitution of the Republic of China. For the text of it see Bau, *Modern Democracy in China*, pp. 401-409, and *China Year Book 1925*, pp. 665-670 (a slightly different version).

6. Within the limits of the statutes citizens shall have the right of freedom of abode and of changing the same.
7. Within the limits of the statutes citizens shall have the right of freedom of religious belief.

*Art. 6.* In accordance with the provisions of the statutes citizens shall have the right of petitioning the Legislature.

*Art. 7.* In accordance with the provisions of the statutes citizens shall have the right to institute proceedings in the Courts of Law.

*Art. 8.* In accordance with the provisions of the statutes citizens shall have the right of petitioning administrative officers and of lodging complaints with the Ping-cheng-yuan.

*Art. 9.* In accordance with the provisions of law and ordinance citizens shall have the right to attend the examinations for the appointment of officers and to enter the public service.

*Art. 10.* In accordance with the provisions of the statutes citizens shall have the right to elect and to be elected.

*Art. 11.* In accordance with the provisions of the statutes citizens are subject to the duty of paying taxes.

*Art. 12.* In accordance with the provisions of the statutes citizens are subject to the duty of performing military service.

*Art. 13.* The provisions made in this chapter, that are not in conflict with the law, ordinances, and discipline of the Army and Navy, shall be applicable to persons belonging to the said service.

### CHAPTER III. THE PRESIDENT

*Art. 14.* The President is the head of the Nation and combines in himself all the powers of the government.

*Art. 15.* The President shall represent the Chung Hua Min Kuo.

*Art. 16.* The President shall be responsible to the whole Nation.

*Art. 17.* The President shall convoke the Legislature and open, prorogue, and close its sessions.

The President, with the concurrence of the Council of State, may dissolve the Legislature; in the case of dissolution new members must be elected and the Legislature convoked within six months from the date of dissolution.

*Art. 18.* The President may initiate legislation and shall lay the estimates before the Legislature.

*Art. 19.* For the promotion of public welfare, for the execution of the statutes, or in pursuance of authority granted by statute, the President may issue or cause to be issued ordinances, but no ordinance shall alter any statute.

*Art. 20.* In order to maintain peace and order, or to avert extraordinary calamities, at a time of urgent necessity when the Legislature cannot be convoked, the President, with the concurrence of the Council of State, may issue emergency ordinances having the force of law; but such ordinances shall be submitted to the Legislature for ratification at the beginning of its next session.

Should the said emergency ordinances be rejected by the Legislature, they shall, thereafter, be null and void.

*Art. 21.* The President shall prescribe and determine the organization of all offices and shall issue the regulations fixing the duties of officials.

The President shall appoint and dismiss civil and military officers.

*Art. 22.* The President shall declare war and conclude peace.

*Art. 23.* The President is the Commander-in-Chief of the Army and Navy, and leads the land and sea forces of the Nation.

The President shall determine the organization and the strength of the Army and Navy.

*Art. 24.* The President shall receive foreign ambassadors and ministers.

*Art. 25.* The President makes treaties; but should articles therein provide for any change of territory, or increase the burdens of the citizens, the concurrence of the Legislature shall be required.

*Art. 26.* The President may, in accordance with the provisions of the statutes, declare a state of siege.

*Art. 27.* The President may confer titles of nobility, rank, orders, and other marks of honor.

*Art. 28.* The President may grant general amnesty, special pardon, commutation of punishment and restoration of rights. In the case of general amnesty the concurrence of the Legislature shall be required.

*Art. 29.* When the President, for any cause, vacates his



office or is unable to exercise the powers and functions connected therewith, the Vice-President shall act in his stead.

#### CHAPTER IV. LEGISLATURE

*Art. 30.* Statutes shall be enacted by the Legislature composed of members elected by the people.

The organization of the Legislature and the method of the election of its members shall be prescribed and determined by the Constitutional Compact Conference.

*Art. 31.* The competence of the Legislature shall be as follows:

1. To discuss and pass bills.
2. To discuss and pass the estimates.
3. To discuss and pass or approve measures relating to the assumption of public debts, and to the contracting of other liabilities to the charge of the National Treasury.
4. To reply to inquiries addressed to it by the President.
5. To receive petitions from the people.
6. To initiate legislation.
7. To submit to the President suggestions and opinions relating to legislation and other matters.
8. To raise questions in regard to administration over which doubts have arisen and to request the President to reply thereon. But the President may refuse to reply should he deem it necessary for the matter to be kept in secret.
9. Should the President make an attempt against the State the Legislature may institute against him impeachment proceedings in the Supreme Court of Justice, if approved by a majority of three fourths or over, of a quorum of four fifths or over, of the total number of members of the Legislature.

The exercise of the powers mentioned in clauses 1 to 8 of this article, and *Arts. 20, 25, 28, 55, and 57* shall require the concurrence of a majority of the members present in the Legislature.

*Art. 32.* The annual session of the Legislature shall not exceed four months in duration, but may be prolonged should the President consider it necessary. The President may call an extraordinary session during the recess.

*Art. 33.* The deliberations of the Legislature shall be public, but the members may sit behind closed doors at the request of the President, or as a result of the decision of a majority of the members present.

*Art. 34.* Bills which have passed the Legislature shall be promulgated and enforced by the President.

But if the President shall disapprove a bill duly passed in the Legislature, he may return the bill to the Legislature for reconsideration, with a statement of the reasons of his disapproval. Even in case that the former decision of the Legislature be adhered to by a majority of two thirds or over, of the members present, if the President still maintain that the bill would greatly endanger and harm, either the internal administration of the state or its foreign relations, or that there are great and important obstacles in the way of its execution, in such a case the President may, with the concurrence of the Council of State, withhold promulgation.

*Art. 35.* The Speaker and the Deputy Speaker of the Legislature shall be elected from and among the members by a majority of the votes cast.

*Art. 36.* Members of the Legislature shall not be held responsible, outside of the House, for their speeches, debates, or for votes cast in the House.

*Art. 37.* Except when discovered in the commission of a crime, or when involved in crimes connected with internal or external troubles, no member of the Legislature shall be arrested during the session without the permission of the House.

*Art. 38.* The Legislature shall prescribe its own rules.

## CHAPTER V. THE ADMINISTRATION

*Art. 39.* The President is the chief of the Administration and shall be assisted by one Secretary of State.

*Art. 40.* The affairs of administration shall be separately conducted by the Departments of Foreign Affairs, Interior, Finance, War and Navy, Justice, Education, Agriculture and Commerce, and of Communications.

*Art. 41.* The Heads of the Departments shall manage the administration of their respective Departments in accordance with laws and ordinances.

*Art. 42.* The Secretary of State, the Heads of the Departments and Special Delegates, representing the President, shall be entitled to sit and speak in the Legislature.

*Art. 43.* The Secretary of State and the Heads of the Departments may be impeached by the Board of Censors and judged by the Ping-cheng-yuan should they violate the law.

#### CHAPTER VI. THE COURTS OF LAW

*Art. 44.* The Courts of Law shall be composed of the law officers appointed by the President.

The organization of the Courts of Law and the qualifications of the law officers shall be determined by statute.

*Art. 45.* The Courts of Law, in accordance with the provisions of the statutes, shall try and judge, independently, all civil and criminal cases. But administrative law proceedings and other special law proceedings, shall be tried and judged according to the law governing the same.

*Art. 46.* The procedure of impeachment cases in the Supreme Court of Justice, as provided for under clause 9 of *Art. 31*, shall be determined separately by statute.

*Art. 47.* In the Courts of Law trials shall be conducted and judgment shall be rendered publicly. When, however, it is considered that publicity may be prejudicial to peace and order, or to public morality, secrecy may be observed.

*Art. 48.* During his term of office no law officer shall be reduced in salary, nor be transferred to another office, nor shall he be deprived of his office, except as a consequence of punishment, according to statute, or of disciplinary measures entailing dismissal.

Regulations governing the discipline of law officers shall be determined by statute.

#### CHAPTER VII. THE COUNCIL OF STATE

*Art. 49.* The Council of State, when consulted by the President, shall deliberate upon important matters of state.

The organization of the Council of State shall be determined by the Constitutional Compact Conference.

## CHAPTER VIII. FINANCE

*Art. 50.* The imposition of new taxes and the modification of the rates of the existing taxes shall be made by statute. The taxes levied at present shall, unless changed by statute, be collected as in the past.

*Art. 51.* The annual receipts and expenditures of the state shall be dealt with every year in accordance with the provisions of the estimates passed by the Legislature.

*Art. 52.* In order to meet special requirements there may be included in the estimates appropriations extending over a certain number of years as a Continuing Expenditure Fund.

*Art. 53.* In order to supply deficiencies in the estimates, or to meet requirements unprovided for in the same, a Reserve Fund shall be provided for in the estimates.

*Art. 54.* Estimates for the objects of expenditure specified below shall not be rejected or reduced, except with the concurrence of the President:

1. Those appertaining to the legal obligations of the state.
2. Such necessary expenditures as may have arisen from the provisions of statute.
3. Expenditures necessary to carry out treaties.
4. Expenditures necessary for the organization of the Army and Navy.

*Art. 55.* In case of international warfare or internal disturbance, or in extraordinary circumstances, when the legislature cannot be convoked, the President, with the concurrence of the Council of State, may make urgent financial appropriations. But he shall request the Legislature to ratify the same at the beginning of its next session.

*Art. 56.* If the new estimates have not been acted upon the appropriations of the previous year shall continue in force. The same procedure shall be observed should the adoption of the estimates be delayed after the fiscal year has already begun.

*Art. 57.* The final accounts of the receipts and expenditure of the state shall be audited every year by the Board of Audit, and shall be reported by the President to the Legislature for approval.

*Art. 58.* The organization of the Board of Audit shall be determined by the Constitutional Compact Conference.

## CHAPTER IX.

## THE PROCEDURE FOR MAKING THE CONSTITUTION

*Art. 59.* The Constitution of the Chung Hua Min Kuo shall be drafted by the Constitution Drafting Committee.

This Committee shall be composed of persons not exceeding ten in number elected by the Council of State.

*Art. 60.* The Draft of the Constitution of the Chung Hua Min Kuo shall be examined and passed by the Council of State.

*Art. 61.* After the Constitution of the Chung Hua Min Kuo has been examined and passed by the Council of State it shall be submitted by the President to the National Convention for final adoption.

The organization of the National Convention shall be determined by the Constitutional Compact Conference.

*Art. 62.* The National Convention shall be convoked and dissolved by the President.

*Art. 63.* The Constitution of the Chung Hua Min Kuo shall be promulgated by the President.

## CHAPTER X. SUPPLEMENTARY ARTICLES

*Art. 64.* Until the Constitution of the Chung Hua Min Kuo comes into force the Constitutional Compact shall have the same force as the Constitution.

Laws and ordinances in force before the going into effect of the Constitutional Compact, so far as they do not come into conflict with the same, shall continue to be valid.

*Art. 65.* The Articles proclaimed on the twelfth day of the second month of the first year of the Min Kuo, regarding the favorable treatment of the Tach'ing Emperor after his abdication of the throne, and the special treatment of the Ch'ing Imperial Clan, as well as the special treatment of the Manchus, Mongols, Mohammedans, and Tibetans shall never be modified.

The statute on the treatment of the Mongols, which is correlated with the foregoing Articles, shall continue to be effective unless changed by statute.

*Art. 66.* On the proposal of a majority of two thirds or over of the members of the Legislature, or on the proposal of the President, in either case if approved by a majority of three fourths or over, of a quorum of four fifths or over, of the total number of members of the Legislature, the President

shall convoke the Constitutional Compact Conference to amend the Constitutional Compact.

*Art. 67.* Before the Legislature shall have been convoked, its powers and functions shall be assumed and discharged by the Council of State.

*Art. 68.* The Constitutional Compact of the Chung Hua Min Kuo shall take effect as from the date of promulgation, on which day the Provisional Constitution, proclaimed on the eleventh day of the third month of the first year of the Min Kuo, shall become null and void.

## APPENDIX IV

### MEMORANDUM ON GOVERNMENTAL SYSTEMS

*Submitted by Dr. Frank J. Goodnow,  
Constitutional Adviser to the Chinese Government,  
to President Yuan Shih-Kai<sup>1</sup>*

The determination in a given country of the form of government established therein has seldom if ever been the result of the conscious choice of the people of the country or even of the choice of its most intelligent classes. The establishment on the one hand of a monarchy or on the other hand of a republic has in almost all instances been due to influences almost beyond human control. The former history of the country, its traditions, its social and economic conditions, all have either favored the form of government which has been adopted, or, in case the form of government at first adopted has not been in harmony therewith, have soon brought it about that that form is replaced by one which is better suited to the country's needs.

In other words, the form of government which a country usually possesses is for the most part determined by the necessities of practical life. Among the contributing causes which fix forms of government, one of the most important is force. Almost all monarchies thus owe their origin in last analysis to the exertions of some one man who has been able to organize the material power of the country in such a way as to overcome all competitors. If he has able sons or male relatives, if he has ruled wisely and if the conditions of the country have been such as to favor monarchical rule, he may be able

<sup>1</sup> Hornbeck. *Contemporary Politics in the Far East*, pp. 413-424.

to establish a dynasty which will during a long period successfully govern the country.

Under such conditions one of the most perplexing problems of government is probably more satisfactorily solved than has usually been the case in republics. For on the death of the monarch there is no question as to the succession to the executive power. No election or other method of choosing a successor is necessary. As the English law expresses it: "The King is dead, long live the King." In order, however, that the desired result may be attained, it is absolutely necessary that the law of succession be clearly determined and practically universally accepted, else the death of the monarch will bring into being numerous aspirants for the throne whose conflicting claims can be adjudicated only by resort to civil war.

History would seem to prove, furthermore, that the only permanently satisfactory solution of the question of succession in monarchical states is that which has been reached by the states of Europe. This consists in fixing the succession to the throne upon the eldest son of the monarch or, in default of sons, upon the nearest oldest male relative. Under this method he who is by the law of succession entitled to the throne is permitted to waive his rights, in which case, if it is the eldest son who has so waived his rights, the next eldest son takes his place.

If some such method of fixing the succession is not adopted, if, for example, the succession to the throne is left to the determination of the monarch, who may choose as his successor a son not the eldest, or some other relative not the nearest eldest male relative, the uncertainty as to the succession is almost certain to produce trouble. Palace intrigues in favor of the various claimants to the throne are sure to develop which both embitter the closing days of the monarch's life and often lead to confusion, if not civil war, after his death.

The advantages which history would seem to show are attendant upon a monarchy as compared with a republic, so far as concerns this important question of succession to the executive power, are thus, it would seem, conditioned very largely upon the adoption of that law of succession which experience has shown to be the best, that is, succession in the eldest nearest male line.



## EUROPEAN REPUBLICS

Until recently the accepted form of government both in Asia and Europe was monarchical. It is true that in Europe, contrary to the usual rule, there were a few republics, such as Venice and Switzerland. But the states possessing a republican government were few in number and small in size. In almost all the important states of the world the government was monarchical in character.

Within the last hundred and fifty years, however, there is noticeable among European peoples a distinct movement away from monarchical and in favor of republican government. The first attempt to establish republican government in any of the large European states was made in England in the seventeenth century. After a successful revolution Charles I, the English king, was tried by Parliament, convicted of treason and executed. A republic, the so-called "Commonwealth," was established with Oliver Cromwell as "Protector" or President. Cromwell obtained his power as a result of his control of the revolutionary army which had defeated the forces of the crown.

This early English republic lasted only a few years and fell as a result of the difficulties attendant upon the question of the succession to the Protectorate which arose on Cromwell's death. But either because the English people were not suited to a republic or because Richard Cromwell did not have the characteristics required of the possessor of executive power, this attempt to continue the English republic was a failure, and England abandoned the republican and reestablished the monarchical form of government. Charles II, the son of the executed Charles I, was put upon the throne, largely as the result of the support of the army but with the almost universal approval of the English people.

The next attempt to form a republic among European peoples was made after the American Revolution at the end of the eighteenth century when the United States of America was formed. The American Revolution was due not so much to an attempt to overthrow monarchical government as to a desire upon the part of the English colonies in America to obtain their independence of England. The success of this revolution brought, however, in its train, almost necessarily, the establishment of a republican government. There was

no royal family left in the country to which its government might be intrusted. There was, furthermore, in the country a distinct sentiment in favor of a republic due in large measure to the fact that quite a large number of those who had participated in the establishment of the ill-fated English republic in the preceding century had come to America and had exerted even after their death an influence in favor of republican institutions.

It is, however, possible that George Washington, who had led the American armies during the Revolution, might have, if he had been so inclined, established himself as king. He was, however, in principle a republican rather than a monarchist. He furthermore had no son who, had he been crowned king, could have succeeded him.

The result was that, when the United States obtained its independence, it definitely adopted the republican form of government which has lasted during a century and a quarter. The unquestioned success which has attended the United States during most of its existence has done much to give to the republican form of government the prestige which it now possesses. It is well, however, to remember that the United States inherited from England the principles of constitutional and parliamentary government and that these principles had been applied in America for a century or more before the republic was established. The change from the form of government which was in force during the colonial period to the republic adopted in 1789 was not therefore anything in the nature of a change from autocracy to a republic. Such change, as was made had been preceded by a long period of preparation and discipline in self-government. Furthermore, the American people even of that day possessed a high grade of general intelligence, owing to the attention which had from the very beginning of American history been given to the common schools, where almost every child could learn at any time to read and write.

### THE FRENCH REVOLUTION

The establishment of the American republic was followed almost immediately by the formation of the French republic. The government of France prior to the declaration of the republic had been autocratic. Almost all public powers were

centered in the crown and the people participated hardly at all in the administration. The French people had thus had little experience in self-government and were therefore unable to carry on successfully the republic which they endeavored to establish. Periods of disorder, followed by military dictatorships, followed in rapid succession. The monarchy was restored after the fall of Napoleon largely as the result of foreign intervention. A revolution in 1830 brought into being a more liberal monarchy. This was overthrown by a revolution in 1848, when a republic was again established. The president of this republic, the nephew of the great Napoleon, overthrew it and declared himself emperor. After the Franco-Prussian War in 1870, he was deposed and the present French republic came into being. This republic has now lasted nearly half a century and gives every evidence of permanence.

It is well to remember, however, that the present permanence of republican institutions in France was secured only after nearly a century of political change, if not disorder, and that during that century serious attempts had been made both to give the people generally that education upon which intelligent political action must be based and to accustom them by participation in public affairs to the exercise of powers of self-government.

The French, like the Americans, would appear to have solved successfully the most difficult problem in republican government, that is, the succession to the executive power. In France the president is elected by the legislature. In the United States he is elected by the people. On both France and the United States the people have had long experience in self-government through participation in public affairs, while in both countries, during the past half century particularly, great attention has been paid to their general education through schools in many cases supported by the government. The result is that the grade of intelligence of the people in both America and France is, comparatively speaking, high.

#### THE LATIN REPUBLICS

The examples given in the latter part of the nineteenth century by the United States and France were very largely followed in South and Central America at the time the former

Spanish colonies in this part of the world achieved their independence. As was the case in the United States when it became independent a republic seemed the only practicable form of government which could then be adopted. There was no royal family to which the people might look for guidance.

The success which had been attendant upon the establishment of a republic in North America had caused the belief to be entertained by many thinkers, both that a republic was the best form of government and that its establishment and maintenance were possible under all conditions and among all peoples. Republics were therefore established almost everywhere throughout South and Central America. But, either because of the disorders which were incident to the long struggle for independence or because of the difficulties inherent in a republican form of government among a low grade of intelligence, due to the lack of general education, and accustomed only to autocratic rule, the South and Central American republics have not been generally successful. For years after the independence of the Spanish colonies was achieved South and Central America was the scene of continual disorder, incident for the most part to the struggles of military leaders for political power. At times there were periods of comparative peace due to the success of some extraordinarily strong man who was able to seize and keep in his hands political power. Little if any attempt was for a long time made by any of those who obtained political power to educate the people generally through the establishment of schools or to aid them in the acquisition of political experience by according them participation in the government. The result was that when the strong hand which controlled the country was relaxed, owing either to the increasing age or death of him who possessed political power, disorder again appeared, due to the struggles of the claimants for the political succession—since no satisfactory solution of the question of succession was reached. Whatever progress the country had been able to make during its period of peace was arrested and not infrequently the anarchy and chaos which followed caused a serious deterioration in the economic and social conditions of the country.

What has happened in Mexico recently has too often been the lot of the Central and South American states under a republican form of government not suited to their stage of

economic and political development. Under the government of Diaz, who acquired political power through his control of the army, it seemed as if Mexico had successfully solved the problem of government. Diaz, however, did little for the education of the people and discouraged rather than encouraged their participation in the government. When increasing age caused him to relax his control, revolution broke out again and he fell from power. Since his loss of power the country has been devastated by the contending armies of rival leaders, and at present it would seem that its salvation is possible only as the result of foreign intervention.

It is, of course, true that in some of the South American countries progress is apparently being made in solving the problems of republican government. Such countries are particularly Argentina, Chile, and Brazil. In both Argentina and Chile a long period of disorder and disturbance has been followed by a comparatively long period of peace. In Brazil the establishment of the republic, about twenty-five years ago, was accompanied by little trouble and the subsequent life of the republic has been a peaceful one. In all three countries considerable progress has been made in the establishment of a constitutional government—in Argentina and Chile as one of the results of the struggles of the early part of the nineteenth century, in Brazil, partly, at any rate, during the empire which preceded the present republic, and which encouraged the participation of the people in the government of the country.

#### LESSONS FROM REPUBLICAN EXPERIENCE

The experience of the South and Central American countries would seem to inculcate the same lessons which may be derived from the experience of the United States and France. These are:

*First.* That the difficult problem of the succession to executive power in a republic may be solved by a people which has a high general intelligence due to the existence of schools where general education may be obtained and which has learned to exercise political power through participation in the affairs of government; and

*Second.* That little hope may be entertained of the successful solution of the question of presidential succession in a

country where the intelligence of the people is not high and where the people do not acquire political wisdom by sharing in the exercise of political power under some form of constitutional government. Where such conditions do not exist a republican form of government—that is, a government in which the executive is not hereditary—generally leads to the worst possible form of government, namely, that of the military dictator. The best that can be hoped for under such a system is periods of peace alternating with periods of disorder during which the rival claimants for political power are striving among themselves for the control of the government.

#### GREAT POWERS WILL NOT PERMIT DISORDER

At the present time, it may further be remarked, it is very doubtful whether the great powers of the European world will permit the government of the military dictator permanently to exist, if it continues to be accompanied by the disorder which has been its incident in the past. The economic interests of the European world have grown to be so comprehensive, European capital and European commercial and industrial enterprises have become so wide in their ramifications, that the governments of the foreign countries interested, although caring little what may be the form of government adopted by the nations with which they deal, are more and more inclined to insist, where they have the power, that conditions of peace shall be maintained in order that they may receive what they consider to be the proper returns on their investments. This insistence they are more and more liable to carry to the point of actual destruction of the political independence of offending nations and of direct administration of their government, if this is necessary to the attainment of the ends desired.

It is therefore becoming less and less likely that countries will be permitted in the future to work out their own salvation through disorder and revolution, as may have been the case during the past century with some of the South American countries. Under modern conditions countries must devise some methods of government under which peace will be maintained or they will have to submit to foreign control.

## CHINA'S NEEDS CONSIDERED

The question naturally presents itself: How do these considerations affect the present political situation of China?

China is a country which has for centuries been accustomed to autocratic rule. The intelligence of the great mass of its people is not high, owing to the lack of schools. The Chinese have never been accorded much participation in the work of government. The result is that the political capacity of the Chinese people is not large. The change from autocratic to republican government made four years ago was too violent to permit the entertainment of any very strong hopes of its immediate success. Had the Tsing dynasty not been an alien rule which it had long been the wish of the Chinese people to overthrow, there can be little doubt that it would have been better to retain the dynasty in power and gradually to introduce constitutional government in accordance with the plans outlined by the commission appointed for this purpose. But the hatred of alien rule made this impossible and the establishment of a republic seemed at the time of the overthrow of the Manchus to be the only alternative available.

It cannot, therefore, be doubted that China has during the last few years been attempting to introduce constitutional government under less favorable auspices than would have been the case had there been a royal family present which the people regarded with respect and to which they were loyal. The great problem of the presidential succession would seem still to be unsolved. The present arrangement cannot be regarded as satisfactory. When the present president lays down the cares of office there is great danger that the difficulties which are usually incident to the succession in countries conditioned as is China will present themselves. The attempt to solve these difficulties may lead to disorders which if long continued may seriously imperil the independence of the country.

What under these conditions should be the attitude of those who have the welfare of China at heart? Should they advocate the continuance of the Republic or should they propose the establishment of a monarchy?

These are difficult questions to answer. It is of course not susceptible of doubt that a monarchy is better suited than a republic to China. China's history and traditions, her social

and economic conditions, her relations with foreign powers all make it probable that the country would develop that constitutional government which it must develop if it is to preserve its independence as a state, more easily as monarchy than as a republic.

But it is to be remembered, that the change from a republic to a monarchy can be successfully made only on the conditions:

*First.* That the change does not meet with such opposition either on the part of the Chinese people or of foreign powers as will lead to the recurrence of the disorders which the present republican government has successfully put down. The present peaceful conditions of the country should on no account be imperiled.

*Second.* The change from republic to monarchy would be of little avail if the law of succession is not so fixed that there will be no doubt as to the successor. The succession should not be left to the crown to determine, for the reasons which have already been set forth at length. It is probably of course true that the authority of an emperor would be more respected than the authority of a president. The people have been accustomed to an emperor. They hardly know what a president is. At the same time it would seem doubtful if the increase of authority resulting from the change from president to emperor would be sufficient to justify the change, if the question of the succession were not so securely fixed as to permit of no doubt. For this is the one greatest advantage of the monarchy over the republic.

*Third.* In the third place it is very doubtful whether the change from republic to monarchy would be of any lasting benefit to China, if provision is not made for the development under the monarchy of the form of constitutional government. If China is to take her proper place among nations greater patriotism must be developed among the people and the government must increase in strength in order to resist foreign aggression. Her people will never develop the necessary patriotism unless they are given greater participation in the government than they have had in the past. The government never will acquire the necessary strength unless it has the cordial support of the people. This it will not have unless again the people feel that they have a part in the government. They must in some way be brought to think of the government



as an organization which is trying to benefit them and over whose actions they exercise some control.

Whether the conditions which have been set forth as necessary for such a change from republic to monarchy as has been suggested are present, must of course be determined by those who both know the country and are responsible for its future development. If these conditions are present there can be little doubt that the change would be of benefit to the country.

## APPENDIX V

### PERMANENT CONSTITUTION OF THE REPUBLIC OF CHINA<sup>1</sup>

The Constitution of the Republic of China, with the object of establishing the national dignity and maintaining the national boundaries, and in order to promote the welfare of the people and uphold principles of humanity, has hereby ordained the present Constitution for promulgation to the whole country, to be permanently observed by all.

#### CHAPTER I. FORM OF GOVERNMENT

*Art. 1.* The Republic of China shall be a unified Republic forever.

#### CHAPTER II. SOVEREIGNTY

*Art. 2.* The Sovereignty of the Republic of China is vested in the whole body of the People.

#### CHAPTER III. TERRITORY

*Art. 3.* The Territory of the Republic of China consists of all dominions in the possession of China. The territory and its division of areas shall not be altered except by law.

#### CHAPTER IV. CITIZENSHIP

*Art. 4.* All persons legally belonging by nationality to the Republic of China shall be citizens of the Republic of China.

*Art. 5.* Citizens of the Republic of China shall be equal, without any distinction of race, class, or religion.

<sup>1</sup>Although promulgated as the Permanent Constitution by President Tsao Kun, this Constitution has never been actually enforced. For the contents of the constitution (translated by Dr. M. T. Z. Tyau) see *China Year Book*, 1925, pp. 694-705.

*Art. 6.* Citizens of the Republic of China shall not be arrested, imprisoned, tried, or punished except in accordance with law.

Any citizen under arrest may in accordance with the law apply to a Court of Justice for a writ of *Habeas Corpus*.

*Art. 7.* The residences of citizens of the Republic of China shall not be entered or searched except in accordance with the law.

*Art. 8.* The secrecy of letters and correspondence of citizens of the Republic of China shall not be violated except in accordance with the law.

*Art. 9.* Citizens of the Republic of China shall have the liberty of electing residence and profession, on which no restriction shall be imposed except in accordance with the law.

*Art. 10.* Citizens of the Republic of China shall have the liberty of assembly and forming societies, on which no restriction shall be imposed except in accordance with the law.

*Art. 11.* Citizens of the Republic of China shall have the liberty of speech, authorship, and publication, on which no restriction shall be imposed except in accordance with the law.

*Art. 12.* Citizens of the Republic of China shall have the liberty to honor Confucius and to profess any religion, on which no restriction shall be imposed except in accordance with the law.

*Art. 13.* Citizens of the Republic of China shall have an inviolable right to the possession of property; and any expropriation necessitated by a consideration of the public welfare shall be in accordance with the law.

*Art. 14.* Liberties of the citizens of the Republic of China, other than those provided in this Chapter, not being in contravention of the principle of Constitutional Government, shall be recognized.

*Art. 15.* Citizens of the Republic of China shall have the right to institute legal proceedings before a Court of Justice in accordance with the law.

*Art. 16.* Citizens of the Republic of China shall have the right to petition Parliament and state grievances in accordance with the law.

*Art. 17.* Citizens of the Republic of China shall have the right to vote and to stand for election in accordance with the law.

*Art. 18.* Citizens of the Republic of China shall have the right to be employed in public services in accordance with the law.

*Art. 19.* Citizens of the Republic of China shall have the obligation to pay taxes in accordance with the law.

*Art. 20.* Citizens of the Republic of China shall have the obligation to serve in the army in accordance with the law.

*Art. 21.* Citizens of the Republic of China shall have the obligation to receive elementary education.

#### CHAPTER V. NATIONAL POWERS

*Art. 22.* Of the National Powers of the Republic of China, those pertaining to the Nation shall be exercised in accordance with the provisions of the present Constitution, and those pertaining to the Local Areas shall be exercised in accordance with the present Constitution and with the provisions of the various laws for Provincial Self-government.

*Art. 23.* The Nation shall enact and execute all legislation or the following:

1. International Relations.
2. National Defense.
3. Nationality Law.
4. Criminal, Civil, and Commercial Laws.
5. Prison System.
6. Measures and Weights.
7. Currency and National Banks.
8. Customs tariff, salt tax, revenue stamp tax, tobacco and wine taxes, and other taxes on articles of luxury as well as other duties and taxes throughout the country, the rates of which shall be unified.
9. Post, Telegraphs, and Aviation.
10. National Railways and Roads.
11. National Properties.
12. National Debts.
13. Monopoly and Special Licences.
14. Examination, Employment, Investigation, and Protection of Civil and Military Officers of the Country.
15. All other matters which shall appertain to the Nation in accordance with the present Constitution.

*Art. 24.* In regard to the following matters the Nation shall enact legislation to be executed by the Nation or under its direction by the Local Areas.

1. Agriculture, Industries, Mine and Forestry.
2. Educational System.
3. Banking and Stock Exchange Systems.
4. Aviation and Marine Fishery.
5. Conservancy Works and Waterways Concerning Two or More Provinces.
6. General Regulations Governing Municipal Systems.
7. Requisitions for Public Use.
8. National Census and Statistics.
9. Colonization and Reclamation.
10. Police System.
11. Public Sanitation.
12. Pensions and the Administration of Unemployment.
13. Preservation of Ancient Books, Ancient Objects, and Ancient Monuments Having Historical Value or Cultural Importance.

In regard to the items above-mentioned the Provinces may enact independent laws not in contravention of the legislation of the Nation.

In regard to items 1, 4, 10, 11, 12, and 13 above-mentioned the Provinces may, pending legislation by the Nation, exercise the Power of enactment.

*Art. 25.* In regard to the following matters the Provinces shall enact legislation to be executed by the Provinces or, at their direction, by the Hsiens.

1. Provincial Education, Industries, and Communications.
2. Management and Disposal of Provincial Properties.
3. Provincial Conservancy and Public Works.
4. Land Tax, Title-deed Duty, and other Provincial Taxes.
5. Provincial Debts.
6. Provincial Banks.
7. Provincial Police and Affairs Pertaining to Public Safety.
8. Provincial Social and Public Welfare Work.
9. Local Self-government.
10. Other matters provided by the National Laws.

When any of the items above-mentioned shall concern two or more Provinces it may be undertaken by them jointly, except when otherwise provided by law, and in case the funds shall be insufficient the deficit may be supplemented by the National Treasury after approval by Parliament.

*Art. 26.* Any matter arising not mentioned in *Articles 23,*

24 or 25, which relates to the Nation shall appertain to the Nation; that which relates to the Provinces shall appertain to the Provinces. Controversies arising in this connection shall be adjusted by the highest Court of Justice.

*Art. 27.* In order to obviate the undermentioned evils, or when deemed necessary for the promotion of public welfare, the Nation may by enactment place restriction on the classification and methods of collecting Provincial taxes:

1. Taxes detrimental to the National Revenue or Trade.
2. Double Taxes.
3. Excessive Duties imposed on Public Roads or other means of Communication to the detriment of Communications.
4. Unprofitable taxes imposed on imported articles by the Provinces between different localities for the protection of local products.
5. Transit dues imposed on articles conveyed within the Provinces between different localities.

*Art. 28.* Provincial Laws shall be invalid when they conflict with the National Laws

Doubts arising out of a conflict between a Provincial Law and the National Law shall be resolved by the highest Court Justice.

The foregoing provision relating to the resolution of doubts shall also apply when Provincial Self-government Laws conflict with the National Laws.

*Art. 29.* When a deficit occurs in the National Budget or when there is financial stringency, the Provinces shall, with the sanction of Parliament, bear the responsibility in proportion to their annual receipts.

*Art. 30.* In the event of local financial deficiency or extraordinary catastrophe the locality concerned may be subsidized by the National Treasury upon approval of Parliament.

*Art. 31.* Controversies between Provinces shall be adjusted by the Senate.

*Art. 32.* The organization of the National Army shall be based on a system of compulsory citizen-service. Except for enforcing the provisions of the law governing military service, the Provinces shall have no military duties in time of peace.

Citizens liable to compulsory service shall be mustered for

training at different periods in specified recruiting areas; but the stationing of standing armies shall be restricted to areas of national defense.

The military expense of the Nation shall not exceed one quarter of the national annual expenditures; but this provision shall not apply in case of war with any foreign country.

The strength of the national army shall be determined by Parliament.

*Art. 33.* No Province shall enter into any political alliance agreement.

No Province shall adopt action detrimental to another Province or to the interests of another local area.

*Art. 34.* No Province shall keep a standing army, or establish a military officers' academy or arsenal.

*Art. 35.* Any Province not performing its duty as provided by the law of the Nation or refusing to obey after being reprimanded by the Government, may be forced into submission by the power of the Nation.

The employment of the aforesaid measure shall cease when it is disapproved by Parliament.

*Art. 36.* In the event of one Province invading another with military force, the Government may intervene in accordance with the provision in the preceding Article.

*Art. 37.* In the event of a change in the form of Government or of undermining of the fundamental Constitutional organization, the Provinces shall adopt concerted action for the maintenance of the order established by the Constitution until the original form is restored.

*Art. 38.* The provisions of this Chapter relating to Provinces shall apply to places where Hsiens, but not Provinces, have been created.

## CHAPTER VI. PARLIAMENT

*Art. 39.* The legislative power of the Republic of China shall be exercised by Parliament.

*Art. 40.* Parliament shall consist of a Senate and a House of Representatives.

*Art. 41.* The Senate shall be composed of Senators elected by the highest local assemblies prescribed by law, and by other Electoral Bodies.

*Art. 42.* The House of Representative shall be composed

of Members elected by the various electoral districts in proportion to their population.

*Art. 43.* The election of members of both Houses shall be prescribed by law.

*Art. 44.* No person shall be a member of both Houses simultaneously.

*Art. 45.* No member of either House shall hold concurrently any official post, civil or military.

*Art. 46.* Each House shall determine the qualifications of its members.

*Art. 47.* The term of office for a member of the Senate shall be six years. One-third of the members shall be elected every two years.

*Art. 48.* The term of office for a member of the House of Representatives shall be three years.

*Art. 49.* Members of both Houses shall not be relieved of the duties provided in *Articles 47 and 48* until the day before the opening of the legal session of a newly elected Parliament.

*Art. 50.* Each House shall appoint its Speaker and Vice Speaker, who shall be elected from among its own members.

*Art. 51.* Parliament shall itself convene, open, and close its sessions, but extraordinary sessions shall be called under any of the following circumstances:

1. At the joint request of more than one-third of the members of each House.

2. At the summons of the President.

*Art. 52.* The ordinary session of Parliament shall commence on the first day of the eighth month in each year.

*Art. 53.* The period of the ordinary session shall be four months which may be extended; but the extended period shall not exceed that of an ordinary session.

*Art. 54.* The opening and closing of sessions shall take place simultaneously in both Houses.

When one House adjourns its sittings, the other House shall do likewise at the same time.

When the House of Representatives is dissolved, the Senate shall be adjourned at the same time.

*Art. 55.* The two Houses shall conduct their proceedings separately. No bill shall be introduced simultaneously in both Houses.

*Art. 56.* Unless there is an attendance of more than one-



half of its membership, no business shall be transacted in either House.

*Art. 57.* Deliberations in either House shall be decided by the votes of more than one-half of the members present, and in the event of a tie the Speaker shall have a casting vote.

*Art. 58.* A decision of Parliament shall be the decision of both Houses.

*Art. 59.* The sessions of both Houses shall be held in public, but upon the request of the Government or by decision of the House concerned, secret sessions may be held.

*Art. 60.* When in the opinion of the House of Representatives either the President or the Vice-President has committed treason, he may be impeached by a majority vote of more than two-thirds of an attendance comprising more than two-thirds of the entire membership of the two Houses.

*Art. 61.* When in the opinion of the House of Representatives a Cabinet Minister has violated the law, he may be impeached by a majority vote of more than two-thirds of the members present.

*Art. 62.* The House of Representatives may pass a vote of No Confidence in Cabinet Ministers.

*Art. 63.* The Senate shall try an impeached President, Vice-President, or Cabinet Minister.

In such a trial the verdict of condemnation shall not be pronounced except with the concurrence of more than two-thirds of the members present.

When the President or Vice-President is adjudged guilty, he shall be deprived of his office, but the punishment to be inflicted shall be determined by the highest Court of Justice.

When a Cabinet Minister is adjudged guilty, he shall be deprived of his office and may also be deprived of his public rights. If he is adjudged guilty of a further offense, he shall be tried by a Court of Justice.

*Art. 64.* Each House shall have the right to demand, by addressing a communication to the Government, the institution of an investigation in the case of an official charged with violating the law or failing to perform his duties.

*Art. 65.* Each House shall have the right to suggest proposals to the Government.

*Art. 66.* Each House shall have the right to receive and consider the petitions of citizens.

*Art. 67.* Members of both Houses shall have the right to

address interpellations to the Cabinet Ministers or demand their attendance in either House to reply thereto.

*Art. 68.* Members of both Houses shall not be responsible outside of Parliament for opinions expressed and votes cast in Parliament.

*Art. 69.* Members of both Houses shall, during the period of Parliamentary sessions, not be arrested or taken into custody without the permission of their respective Houses except when apprehended in *flagrante delicto*.

When a member of either House has been arrested in *flagrante delicto* the Government shall at once report the matter to the House concerned; but each House shall have the right to demand, on motion carried, the suspension of judicial proceedings during the period of the sessions and delivery of the arrested member to the custody of the House concerned.

*Art. 70.* The annual allowances and other expenses of members of both Houses shall be fixed by law.

#### CHAPTER VII. THE PRESIDENT

*Art. 71.* The administrative power of the Republic of China shall be exercised by the President with the assistance of the Cabinet Ministers.

*Art. 72.* Any citizen of the Republic of China in full enjoyment of public rights, of the age of forty or more, and resident in the country for more than ten years, shall be eligible for election as President.

*Art. 73.* The President shall be elected by a Presidential Electoral College composed of the entire membership of the two Houses of Parliament.

For this election, there shall be an attendance of at least two-thirds of the entire number of electors and the balloting shall be secret. The candidate obtaining three-fourths of the total votes cast shall be elected; but in the event of there being no definite result after the second ballot, the two candidates obtaining the highest number of votes in the second ballot shall be voted for, when the candidate receiving a majority vote shall be elected.

*Art. 74.* The term of office of the President shall be five years, but in the event of being reelected he may hold office for a second term.

Three months previous to the expiration of the term of office of the President, the members of both Houses shall

themselves convene and organize an Electoral College for the election of a President for the following term.

*Art. 75.* When the President assumes office, he shall take oath as follows:

"I hereby solemnly swear that I will most faithfully observe the Constitution and discharge the duties of the President.

*Art. 76.* In the event of the office of the President becoming vacant, the Vice-President shall succeed until the expiration of the term of office of the President.

In the event of the President being unable for any reason to discharge his duties the Vice-President shall act in his place.

In the event of the Vice-President vacating his post whilst the Presidency is vacant the Cabinet shall officiate for the President, but in such event the members of Parliament shall within three months convene and organize an Electoral College to elect a President for the following term.

*Art. 77.* The President shall be relieved of his duties at the expiration of his term of office. If at the end of the period a new President has not yet been elected, or having been elected is unable to be inaugurated as President, and the Vice-President is also unable to act as President, the Cabinet shall officiate for the President.

*Art. 78.* The election of the Vice-President shall, in accordance with the regulations governing the election of the President, take place simultaneously with the election of the President. In case the Vice-Presidency becomes vacant, a new Vice-President shall be elected to fill the vacancy.

*Art. 79.* The President shall promulgate laws and supervise as well as secure their enforcement.

*Art. 80.* The President may issue mandates for the execution of laws or powers delegated to him by the law.

*Art. 81.* The President shall appoint and dismiss civil and military officials, with the exception of those specially provided for by the Constitution or other laws, which shall be duly observed.

*Art. 82.* The President shall be the Commander-in-Chief of the Army and Navy of the Republic, and shall be in command thereof.

The organization of the Army and Navy shall be prescribed by law.

*Art. 83.* In foreign intercourse the President shall be the representative of the Republic.

*Art. 84.* The President may, with the concurrence of Parliament, declare war but in regard to measures of defense against foreign invasion, he may request the approval of Parliament after the declaration of war.

*Art. 85.* The President may conclude treaties; but treaties of peace and those affecting legislation shall not become valid until the consent of Parliament shall have been obtained.

*Art. 86.* The President may proclaim Martial Law according to law; but if in the opinion of Parliament no such necessity exists, he shall forthwith proclaim the withdrawal of Martial Law.

*Art. 87.* The President may, with the concurrence of the highest Court of Justice, grant pardons, commute punishment, and restore civil rights; but in the case of an impeachment verdict he shall not, except with the concurrence of the Senate, declare restitution of rights.

*Art. 88.* The President may suspend the session of the House of Representatives, but no session shall be suspended more than twice and no suspension shall exceed ten days.

*Art. 89.* When a vote of No Confidence in the Cabinet Ministers has been passed, the President shall either relieve the Cabinet Ministers of their offices or dissolve the House of Representatives; but the House of Representatives shall only be dissolved with the concurrence of the Senate.

During the tenure of office of the same Cabinet Ministers or during the period of the same session there shall not be a second dissolution.

When the President dissolves the House of Representatives he shall immediately order another election to be held and the convocation of the House at a fixed date to be effected within five months to continue the session.

*Art. 90.* With the exception of high treason, no criminal charges shall be brought against the President before he vacates his post.

*Art. 91.* The salaries of the President and the Vice-President shall be fixed by law.

#### CHAPTER VIII. THE CABINET

*Art. 92.* The Cabinet shall be composed of the Cabinet Ministers.

*Art. 93.* The Prime Minister and the Ministers of the various Ministries shall be called Cabinet Ministers.

*Art. 94.* The appointment of the Prime Minister shall be made with the approval of the House of Representatives.

In the event of the Prime Minister vacating his post during the adjournment of Parliament, the President may appoint an Acting Prime Minister. The nomination of the next Prime Minister, however, shall within seven days after the opening of the session of Parliament be submitted to the House of Representatives for approval.

*Art. 95.* The Cabinet Ministers shall assist the President in assuming responsibility towards the House of Representatives.

Without the counter-signature of the Cabinet Ministers, the mandates of the President or dispatches in connection with state affairs, excepting the appointment or dismissal of the Prime Minister, shall not be valid.

*Art. 96.* The Cabinet Ministers may attend the sessions of both Houses and make speeches, but in the case of making explanations when bills are introduced by the Government, delegates may be deputed to act for them.

#### CHAPTER IX. COURTS OF JUSTICE

*Art. 97.* The judicial power of the Republic of China shall be exercised by the Courts of Justice.

*Art. 98.* The organization of the Courts of Justice and the qualifications of the judicial officials shall be determined by law.

The appointment of the Chief Justice of the highest Court of Justice shall be made with the concurrence of the Senate.

*Art. 99.* The Courts of Justice shall receive and attend to all civil, criminal, administrative, and other cases, but cases for which special treatment is reserved by the Constitution and the law shall not be so included.

*Art. 100.* Trials in Courts of Justice shall be conducted in public, but those adjudged to be prejudicial to public peace and order or public morals may be held in camera.

*Art. 101.* The judicial officials shall be independent in the conducting of trials, and no person whatever shall be allowed to interfere.

*Art. 102.* During his tenure of office no judicial official

shall, except in accordance with the law, have his emolument decreased, nor be suspended, nor be transferred to another post.

During his tenure of Office no judicial Official shall be deprived of his post unless he is convicted of crime or of an offense punishable by law. The foregoing provision, however, shall not apply to cases where the system of a Court of Justice is to be reorganized or where the qualifications of judicial officials are to be redetermined.

The punishment of judicial officials shall be determined by law.

#### CHAPTER X. THE LAW

*Art. 103.* Members of both Houses and the Government may introduce bills, but if a bill is rejected by one House it shall not be reintroduced during the same session.

*Art. 104.* Any bill which has been passed by Parliament shall be promulgated by the President within fifteen days after its transmission to him.

*Art. 105.* In the event of the President disapproving a bill passed by Parliament, he shall within the period prescribed for promulgation state his reasons and request its reconsideration. If both Houses adhere to their former decision, the bill shall be promulgated forthwith.

In the event of a bill not being submitted with a request for reconsideration and the period for promulgation having passed, it shall become law. But this shall not apply when Parliament is adjourned or the House of Representatives dissolved before the period for promulgation comes to an end.

*Art. 106.* No law shall be altered or repealed except in accordance with the law.

*Art. 107.* When a resolution passed by Parliament is submitted for reconsideration, the regulations governing the introduction of bills shall apply.

*Art. 108.* Laws that conflict with the Constitution shall be invalid.

#### CHAPTER XI. NATIONAL FINANCE

*Art. 109.* The introduction of new taxes and alterations, in the rate of taxation shall be determined by law.

*Art. 110.* The approval of Parliament shall be obtained for the flotation of national loans and the conclusion of agreements entailing additional burdens on the national exchequer.

*Art. 111.* All financial bills imposing direct burdens on the people shall be first discussed by the House of Representatives.

*Art. 112.* An estimate of the annual expenditures and receipts of the nation shall be prepared in the form of a Budget by the Government, to be first submitted to the House of Representatives within fifteen days after the opening of the sessions of Parliament.

In the event of the Senate amending or rejecting the Budget passed by the House of Representatives, it shall request the concurrence of the House of Representatives in its amendment or rejection; if such concurrence be unobtainable, that which was originally passed by the House of Representatives shall form the Budget.

*Art. 113.* In the case of special undertakings the Government may determine in advance in the Budget the period over which the expenditures are to spread and provide the successive appropriations for such period.

*Art. 114.* In order to provide for deficiencies or omissions in the Budget, the Government may include contingent items in the Budget.

The sums expended under the above provision shall be submitted at the next session to the House of Representatives for approval.

*Art. 115.* Except with the concurrence of the Government, Parliament shall have no right to strike off or reduce any of the following items of expenditure:

1. Those appertaining to the legal obligations of the Nation.
2. Expenditures necessary to carry out treaties.
3. Those which are necessary according to the law.
4. Appropriations to be spread over a period of years.

*Art. 116.* Parliament shall not add to the annual expenditures included in the Budget.

*Art. 117.* Between the commencement of the fiscal year and the passing of the Budget, the monthly expenditure of the Government shall be on the scale of one-twelfth of the amount allowed in the Budget for the previous year.

*Art. 118.* In the event of there being a foreign war, or

suppression of internal rebellion, or relief for extraordinary catastrophe, when the urgency of the situation makes it impossible to issue writs for the summoning of Parliament, the Government may adopt financial measures adequate for the emergency, but it shall request the approval thereof by the House of Representatives within seven days after the opening of the next session of Parliament.

*Art. 119.* Orders on the Treasury for payment on account of the annual expenditures of the Government shall first be approved by the Board of Audit.

*Art. 120.* The statement of payment and receipts for each year shall first be referred to the Board of Audit for investigation and then be reported by the Government to Parliament.

If the statement or bills submitted for approval be rejected by the House of Representatives, the Cabinet Ministers shall be held responsible.

*Art. 121.* The organization of the Board of Audit and the qualification of the auditors shall be determined by law.

During their tenure of office the auditors shall not have their emoluments decreased, nor be suspended, nor transferred to other posts.

The punishment of auditors shall be determined by law.

*Art. 122.* The Chief of the Board of Audit shall be elected by the Senate.

The Chief of the Board of Audit may attend the sittings of both Houses to report on the financial statements and make speeches.

*Art. 123.* The Budget and bills submitted for approval which have been passed by Parliament shall be promulgated by the President after the receipt thereof.

## CHAPTER XII. LOCAL GOVERNMENT SYSTEM

*Art. 124.* Local areas are divided into two grades, the Province (Sheng) and the District (Hsien).

*Art. 125.* In accordance with the stipulations of *Article 22*, Chapter V, of the present Constitution, the Province may itself enact laws for Provincial Self-government, but these shall not conflict with the present Constitution or with any National law.

*Art. 126.* The Provincial Self-government Law shall be drafted by a Provincial Self-government Law Conference



composed of delegates elected by the Provincial Assembly, the District Assemblies, and the professional organizations of the entire Province.

In regard to the delegates above-mentioned, besides one to be elected by each District Assembly, the number to be elected by the Provincial Assembly shall not exceed one-half of the total elected by the District Assemblies. This shall apply also to the delegates to be elected by the various professional organizations.

The delegates to be elected by the Provincial Assembly and the District Assemblies shall not be members of these Assemblies. The law for the governance of such election shall be regulated by the Provincial Law.

*Art. 127.* The following provisions shall apply to all Provinces:

1. The Province shall have a Provincial Assembly which shall be a representative organ of a single-chamber system, and the members shall be directly elected.
2. The Province shall have a Provincial Administrative Council (Sheng Wu Yuan) as executive of the Provincial Self-government Administration, to be composed of from five to nine members (Sheng Wu Yuan) directly elected by the people of the Province, and their term of office shall be four years. Before it is possible to carry out the direct election, an Electoral College may be formed for such election, according to the provisions of the preceding article; but persons in military service shall not be elected unless they have been relieved of office for at least one year.
3. The Provincial Administrative Council shall have a Chairman (Yuan Chang) who shall be elected by and among the members of the Council.
4. Citizens of the Republic of China who have been residing in the province for one year or more shall be equal in the eyes of the law of the Province and be in full enjoyment of all civil rights.

*Art. 128.* The following provisions shall apply to all Districts:

1. The District shall have a District Assembly in which is vested the legislative power over all self-government affairs in the District.

2. The District shall have a Magistrate (Hsien Chang) directly elected by the people of the District as executive, with the assistance of the District Council (Hsien Ts'an Shih Hui), of the District Self-governing Administration. This, however, shall not apply pending the completion of the independence of the Judiciary and the lower grade self-government system.
3. In remitting to the Province the amount of Provincial taxes allocated to it, the District shall have the right to retain a portion thereof, not exceeding forty per cent of the entire amount.
4. The Provincial Government shall have not right to dispose of the property and self-government funds of the District.
5. In case of calamities, natural or otherwise, or on account of shortage of self-government funds, the District may apply to the Provincial Administrative Council for, and, with the approval of the Provincial Assembly, may receive, subsidies from the Provincial Treasury.
6. The District shall be under obligation to observe National Laws and Provincial Laws.

*Art. 129.* The division of Provincial and District taxes shall be decided upon by the Provincial Assembly.

*Art. 130.* The Province shall not enforce special laws in one or a few Districts, but those concerning the common welfare of the Province shall not be included in this restriction.

*Art. 131.* The District shall have full executive power in matters of self-government in the District; and the Province shall not interfere except in matters relating to punishments provided by the Provincial Law.

*Art. 132.* National administrative affairs in the Province or District, besides being executed by officials appointed by the National Government, may be executed by the Provincial or District self-government administrative organs by delegation.

*Art. 133.* In the event of the Provincial or District self-governing administrative organs, in the execution of national administrative affairs, violating the law, the National Government may impose punishment in accordance with the provisions of the law.

*Art. 134.* The provisions of this chapter shall apply to places where Districts, but not Provinces, have been created.

*Art. 135.* Inner and Outer Mongolia, Tibet, and Chinghai may, in conformity with the common wish of the local inhabitants, be divided into two grades, the Province and the District, to which the provisions of this chapter shall apply, but pending the creation of Province and District their administrative system shall be prescribed by law.

CHAPTER XIII. AMENDMENTS TO AND INTERPRETATION  
AND VALIDITY OF THE CONSTITUTION

*Art. 136.* Parliament may introduce bills for the amendment of the Constitution.

Unless such bills be approved by upwards of two-thirds of the members of each House present, they shall not be adopted.

Unless it be endorsed by upwards of one-fourth of the total membership of both Houses, no member of either House shall propose an amendment to the Constitution.

*Art. 137.* The amendment of the Constitution shall be undertaken by the Constitution Conference.

*Art. 138.* The form of Government shall not be a subject for amendment.

*Art. 139.* Ambiguities in regard to the meaning of the Constitution shall be interpreted by the Constitution Conference.

*Art. 140.* The Constitution Conference shall be composed of the entire membership of Parliament.

Unless there be a quorum of upwards of two-thirds of the total membership of Parliament no such aforementioned Conference shall be held; and unless upwards of three-fourths of the members present vote in its favor no amendment shall be passed; but in the interpretation of any ambiguous point a decision may be reached with the approval of upwards of two-thirds of the members present.

*Art. 141.* Except by amendments made in accordance with the provisions of this chapter the Constitution shall never lose its validity, whatever change or development may come to pass.

## APPENDIX VI

### THE ORGANIC LAW OF THE NATIONAL GOVERNMENT OF THE REPUBLIC OF CHINA<sup>1</sup>

*(Promulgated on October 4, 1928)*

The Kuomintang of China, in order to establish the Republic of China on the basis of the Three Principles of the People and the Constitution of Five Powers, which form the underlying principle of the Revolution, having conquered all opposition by military force and having now brought the Revolution from the military stage to the educative stage, deem it necessary to construct a framework for the Constitution of Five Powers with a view to developing the ability of the people to exercise political power, so that constitutional government may soon come into existence and political power be restored to the people; and, further, in virtue of the responsibilities hitherto entrusted to the Party for the guidance and supervision of the Government, do hereby ordain and promulgate the following Organic Law of the National Government:

#### CHAPTER I. THE NATIONAL GOVERNMENT

*Art. 1.* The National Government exercise all the governing powers of the Republic of China.

*Art. 2.* The National Government shall have the supreme command of the land, naval and air forces.

*Art. 3.* The National Government shall have the power to declare war, to negotiate peace, and to conclude treaties.

*Art. 4.* The National Government shall exercise the power of granting amnesties, pardons, reprieves, and restitution of civic rights.

<sup>1</sup> *China Weekly Review*, Vol. XLVI, No. 7, Oct. 13, 1928, pp. 224, 225.  
*Tywan Two Years of Nationalist China*, pp. 56-61.

*Art. 5.* The National Government shall be composed of the following five Yuan: the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Examination Yuan, and the Control Yuan.

*Art. 6.* There shall be a President and from twelve to sixteen State Councillors of the National Government.

*Art. 7.* The Presidents and Vice-Presidents of the Five Yuan shall be appointed from among the State Councillors of the National Government.

*Art. 8.* The President of the National Government shall represent the National Government in receiving foreign diplomatic representatives and in officiating or participating in State functions.

*Art. 9.* The President of the National Government shall concurrently be the Commander-in-Chief of the land, naval, and air forces of the Republic of China.

*Art. 10.* In case the President of the National Government is unable to discharge his duties from any cause whatsoever, the President of the Executive Yuan shall act in his Place.

*Art. 11.* The National Government shall conduct national affairs through the State Council. The State Council shall be composed of the State Councillors of the National Government, and the President of the National Government shall be the Chairman of the State Council.

*Art. 12.* All matters which cannot be settled between two or more of the Yuan shall be referred to the State Council for decision.

*Art. 13.* All laws promulgated and all mandates issued by virtue of a decision of the State Council shall be signed by the President of the National Government and countersigned by the Presidents of the Five Yuan.

*Art. 14.* Each of the Five Yuan may, according to law, issue orders.

## CHAPTER II. THE EXECUTIVE YUAN

*Art. 15.* The Executive Yuan shall be the highest executive organ of the National Government.

*Art. 16.* The Executive Yuan shall have a President and a Vice-President.

*Art. 17.* The Executive Yuan shall establish Ministries to which shall be entrusted the various executive duties.

The Executive Yuan may appoint Commissions to take charge of specified executive matters.

*Art. 18.* The Ministries of the Executive Yuan shall each have a Minister, a Political Vice-Minister, and an Administrative Vice-Minister, and the various Commissions shall each have a Chairman and a Vice-Chairman, all of whom shall be appointed or removed by the National Government at the instance of the President of the said Yuan.

*Art. 19.* The Ministers, and the Chairmen of the various Commissions, of the Executive Yuan may, when necessary, attend the meetings of the State Council and of the Legislative Yuan.

*Art. 20.* The Executive Yuan may introduce in the Legislative Yuan bills on matters within its own competence.

*Art. 21.* Meetings of the Executive Yuan shall be attended by the President, the Vice-President, the Ministers of the various Ministries, and the Chairmen of the various Commissions, and presided over by the President of the said Yuan.

*Art. 22.* The following matters shall be decided at the meetings of the Executive Yuan:

1. Bills on legislative matters to be introduced in the Legislative Yuan.
2. Budgets to be submitted to the Legislative Yuan.
3. Amnesties to be submitted to the Legislative Yuan.
4. Declaration of war, negotiation for peace, conclusion of treaties, and other important international matters to be submitted to the Legislative Yuan.
5. The appointment or dismissal of administrative officials of or above the rank of Chien Jen (Third Class).
6. All matters which cannot be settled between the various Ministries and Commissions of the Executive Yuan.
7. All matters which, according to Law or in the opinion of the President of the Yuan, should be decided at the meetings of the said Yuan.

*Art. 23.* The various Ministries and Commissions of the Executive Yuan may, according to law, issue orders.

*Art. 24.* The organization of the Executive Yuan and of the various Ministries and Commissions shall be determined by law.

## CHAPTER III. THE LEGISLATIVE YUAN

*Art. 25.* The Legislative Yuan shall be the highest legislative organ of the National Government.

Article "The Legislative Yuan" shall have the power to decide upon the following: legislation, budgets, amnesties, declaration of war, negotiation for peace, conclusion of treaties, and other important international affairs.

*Art. 26.* The Legislative Yuan shall have a President and a Vice-President.

In case the President is unable to discharge his duties from any cause whatsoever, the Vice-President shall act in his place.

*Art. 27.* The Legislative Yuan shall be composed of from forty-nine to ninety-nine members, who shall be appointed by the National Government at the instance of the President of the said Yuan.

*Art. 28.* The term of office of the members of the Legislative Yuan shall be two years.

*Art. 29.* The members of the Legislative Yuan shall not concurrently be non-political administrative officials of the various organs of the central or local governments.

*Art. 30.* The President of the Legislative Yuan shall preside at all meetings of the Legislative Yuan.

*Art. 31.* All resolutions passed by the Legislative Yuan shall be decided upon and promulgated by the State Council.

*Art. 32.* The organization of the Legislative Yuan shall be determined by law.

## CHAPTER IV. THE JUDICIAL YUAN

*Art. 33.* The Judicial Yuan shall be the highest judicial organ of the National Government and shall take charge of judicial trial, judicial administration, disciplinary punishment of officials, and trial of administrative cases.

The granting of pardons and reprieves and the restitution of civic rights shall be submitted by the President of the Judicial Yuan to the National Government for approval and action.

*Art. 34.* The Judicial Yuan shall have a President and a Vice-President.

In case the President is unable to discharge his duties from any cause whatsoever, the Vice-President shall act in his place.

*Art. 35.* The Judicial Yuan may introduce in the Legislative Yuan bills on matters within its own competence.

*Art. 36.* The organization of the Judicial Yuan shall be determined by law.

#### CHAPTER V. THE EXAMINATION YUAN

*Art. 37.* The Examination Yuan shall be the highest examination organ of the National Government and shall take charge of examinations and determine the qualifications for public service. All public functionaries shall be appointed only after having, according to law, passed an examination and their qualifications for public service having been determined by the Examination Yuan.

*Art. 38.* The Examination Yuan shall have a President and a Vice-President.

In case the President is unable to discharge his duties from any cause whatsoever, the Vice-President shall act in his place.

*Art. 39.* The Examination Yuan may introduce in the Legislative Yuan bills on matters within its own competence.

*Art. 40.* The organization of the Examination Yuan shall be determined by law.

#### CHAPTER VI. THE CONTROL YUAN

*Art. 41.* The Control Yuan shall be the highest supervisory organ of the National Government and shall, according to law, exercise the following powers:

1. Impeachment.
2. Auditing.

*Art. 42.* The Control Yuan shall have a President and a Vice-President.

In case the President is unable to discharge his duties from any cause whatsoever, the Vice-President shall act in his place.

*Art. 43.* The Control Yuan shall be composed of from nineteen to twenty-nine members, who shall be appointed by the National Government at the instance of the President of the said Yuan.

The security of tenure of office of the members of the Control Yuan shall be determined by law.

*Art. 44.* All meetings of the Control Yuan shall be attended by members of the Control Yuan and presided over by the President of the said Yuan.



*Art. 45.* The members of the Control Yuan shall not concurrently hold any office in any of the organs of the central or local governments.

*Art. 46.* The Control Yuan shall have the power to introduce in the Legislative Yuan bills on matters within its own competence.

*Art. 47.* The organization of the Control Yuan shall be determined by law.

#### CHAPTER VII. ADDITIONAL ARTICLE

*Art. 48.* The present Law shall come into force on the day of its promulgation.

## APPENDIX VII

### COMPLETE TEXT OF CHINA'S PROVISIONAL CONSTITUTION

The following is the Complete Text of the Yueh Fa (Provisional Constitution) adopted at the National People's Convention at Nanking, May 12, 1931. It was promulgated on June 1 of the same year.<sup>1</sup>

#### PREAMBLE

The National Government, in order to reconstruct the Republic of China on the basis of the Three Principles of the People and the Constitution of Five Powers, which forms the underlying principle of the Revolution, having now brought the Revolution from the military to the Political Tutelage Period, deems it necessary to promulgate a Yueh Fa (Provisional Constitution) for general observance, so that the realization of Constitutional Government may be accelerated and political power restored to a popularly elected government; and further, in pursuance of the Last Will of our late Leader, has called at the National Capital the Kuo-Min-Hui-I (National People's Convention).

The said National People's Convention do hereby enact and ordain the following Provisional Constitution for enforcement during the Political Tutelage Period:

#### CHAPTER I. GENERAL PRINCIPLES

*Art. 1.* The Territory of the Republic of China consists of the various provinces and Mongolia and Tibet.

*Art. 2.* The Sovereignty of the Republic of China is vested in the people as a whole.

<sup>1</sup> *The China Weekly Review*, Vol. LVI, No. 12, pp. 422, 423, 439, May, 1931.  
See also *China Year Book*, 1931-32, pp. 688-692.

All persons who, according to Law, enjoy the Nationality of the Republic of China shall be Citizens (Kuo Min) of the Republic of China.

*Art. 3.* The Republic of China shall be a unified republic for ever.\*

*Art. 4.* The National Flag of the Republic of China shall have a red background with a "Blue sky and white sun" in the upper left corner.

*Art. 5.* Nanking shall be the National Capital of the Republic of China.

## CHAPTER II. RIGHTS AND DUTIES OF THE PEOPLE

*Art. 6.* All Citizens (Kuo Min) of the Republic of China shall be equal before the Law, irrespective of sex, race, religion or caste.

*Art. 7.* Citizens of the Republic of China shall, according to the stipulation in *Article 8* of the "Outline of National Reconstruction," enjoy in all completely autonomous districts (Hsien) the rights of Election, Initiative, Recall and Referendum as provided by *Article 9* of the "Outline of National Reconstruction."

*Art. 8.* Except in accordance with Law, no person (Jen Min) shall be arrested, detained, tried or punished.

When a person is arrested or detained on a criminal charge, the organ responsible for his (or her) arrest or detention shall send him (or her) to the competent Court for trial not later than 24 hours. The party concerned may himself petition, or some other person may petition on his behalf that he be brought (before the Court) for trial within 24 hours.

*Art. 9.* Except in accordance with Law, no person other than those in active military service, shall be subject to trial by a military court.

*Art. 10.* Except in accordance with Law, no private houses of the people shall be subject to forcible entry, search or sealing.

*Art. 11.* All persons shall have the liberty of conscience.

*Art. 12.* All persons shall be free to choose and change their residence: such freedom shall not be denied or restricted except in accordance with Law.

*Art. 13.* All persons shall have the right to the privacy of correspondence and telegraphic communications: such right

shall not be denied or restricted except in accordance with Law.

*Art. 14.* All persons shall have the freedom of assembly and formation of associations: such freedom shall not be denied or restricted except in accordance with Law.

*Art. 15.* All persons shall have the liberty of speech and publication: such liberty shall not be denied or restricted except in accordance with Law.

*Art. 16.* Except in accordance with Law, no private property shall be sealed or confiscated.

*Art. 17.* The exercise of the right of ownership by any private owner of property, in so far as it does not conflict with the public interest, shall be protected by Law.

*Art. 18.* Where public interest necessitates, the property of the people may be expropriated in accordance with Law.

*Art. 19.* All persons shall have the right to inherit property in accordance with Law.

*Art. 20.* All persons shall have the right of petition (to the Government).

*Art. 21.* All persons shall have the right to institute judicial proceedings at the Courts of Justice, in accordance with Law.

*Art. 22.* All persons shall have the right to submit petitions, and institute administrative proceedings (at the Administrative Court) in accordance with Law (for the redress of wrongs done by Government Administrative Organs).

*Art. 23.* All persons shall have the right to compete in Civil Service Examinations in accordance with Law.

*Art. 24.* All persons may, according to Law, hold public posts.

*Art. 25.* All persons shall have the duty of paying taxes in accordance with Law.

*Art. 26.* All persons shall have the duty of undertaking military service and of performing compulsory labor (for the State) in accordance with Law.

*Art. 27.* All persons shall have the duty to obey the measures taken by Government Organs in the performance of their duties according to Law.

### CHAPTER III. ESSENTIALS OF POLITICAL TUTELAGE

*Art. 28.* The political policies and programs during the Period of Political Tutelage shall be in accordance with the "Outline of National Reconstruction."

*Art. 29.* The system of District Autonomy shall be enforced in accordance with the provisions of the "Outline of National Reconstruction" and the "Law governing the Institution of District Autonomy."

*Art. 30.* During the Period of Political Tutelage, the National Congress of Kuomintang delegates (Kuo-Min-Tang-Tsuan-Kuo-Tai-Piao-Ta-Hui) shall exercise the governing powers on behalf of the National People's Congress (Kuo-Min-Ta-Hai). During the recess of the National Congress of Kuomintang delegates, the Central Executive Committee of the Kuomintang shall exercise the said powers.

*Art. 31.* The National Government shall train and guide (the citizens) in the exercise of the four political rights of election, initiative, recall and referendum.

*Art. 32.* The National Government shall exercise the five governing powers, namely, executive, legislative, judicial, examination and supervisory.

#### CHAPTER IV. PEOPLE'S LIVELIHOOD

*Art. 33.* In order to develop the people's economic welfare, the State (Kuo Chia) shall afford every encouragement and protection to the productive enterprises of the people.

*Art. 34.* In order to develop rural economy, to improve the living conditions of farmers as well as to promote the well-being of peasants, the State shall take active steps for the carrying out of the following measures:

1. Reclamation of all waste land in the country and development of farm irrigation;
2. Establishment of agricultural banks and encouragement of coöperative enterprises in the rural communities;
3. Enforcement of the (Public) Granary System for the prevention of famine and other calamities and replenishment of the people's food-supplies;
4. Development of agricultural education with special emphasis on scientific experiments, extensive development of agricultural produce;
5. Encouragement of road-building in the rural villages to facilitate the transportation of agricultural products.

*Art. 35.* The State shall open and develop oil, coal, gold and iron mines; and shall also encourage and protect private mining enterprises.

*Art. 36.* The State shall undertake and inaugurate State shipping enterprises; and shall also encourage and protect private shipping enterprises.

*Art. 37.* All persons shall be free to choose their profession or occupation. But when it is contrary to the public interest, the State may, by Law, restrict or deny such freedom.

*Art. 38.* All persons shall be free to make contracts: such freedom, in so far as it is not in conflict with the public interest or with good morals, shall be protected by Law.

*Art. 39.* In order to better their economic well-being as well as to promote closer coöperation between Capital and Labor, the people may form occupational organizations in accordance with Law.

*Art. 40.* Both Capital and Labor shall develop productive enterprises in accordance with the principle of coöperation and mutual benefit.

*Art. 41.* In order to improve the living conditions of Labor, the State shall put into effect various Laws for the protection of Labor and shall afford special protection to child and woman workers in respect of their age and health.

*Art. 42.* In order to safeguard as well as relieve peasants and workers who shall be unable to work on account of accidents, sickness, disability or old age, the State shall put into effect a Labor Insurance System.

*Art. 43.* In order to promote the economic interests of the people, the State shall encourage and promote various co-operative enterprises.

*Art. 44.* The State may control or regulate the production or sale, as well as the market price of daily necessities of the people.

*Art. 45.* Laws shall be enacted for the prohibition of usury, and exorbitant rents for the use of immovable properties.

*Art. 46.* The State shall give appropriate relief to those members of the national forces who are disabled in the course of active service.

#### CHAPTER V. EDUCATION OF THE CITIZENS

*Art. 47.* The Three Principles of the People shall be the basic principles of Education in the Republic of China.

*Art. 48.* Both sexes shall have equal opportunity for education.

*Art. 49.* All public and private educational institutions in the country shall be subject to the supervision of the State, and shall also be responsible for the carrying out of the educational policies adopted by the State.

*Art. 50.* All children of school age shall receive free education. Details shall be separately provided by Law.

*Art. 51.* Those who have not had free education (in their youth) shall receive special adult education. Details shall be separately provided by Law.

*Art. 52.* The Central and Local Government shall provide adequate funds for necessary educational expenses, and shall also safeguard the security of funds which are, by Law, specially set apart (for educational purposes).

*Art. 53.* The State shall give encouragement or grants to private educational institutions which have achieved particularly satisfactory results.

*Art. 54.* Encouragement and grants shall be given for the education of overseas Chinese.

*Art. 55.* The State shall encourage and safeguard members of the administrative or teaching staffs of schools who hold satisfactory records and have been long in service.

*Art. 56.* All public and private educational institutions in the country shall establish scholarships and prizes for the encouragement of deserving but needy students.

*Art. 57.* The State shall encourage and protect research and discoveries in science or the arts.

*Art. 58.* The State shall protect and preserve historic remains and ancient relics which have historical, cultural or artistic value.

#### CHAPTER VI. DIVISION OF POWER BETWEEN THE CENTRAL AND LOCAL GOVERNMENTS

*Art. 59.* The principle of equilibrium shall be adopted in the division of power between the Central and local Governments, as stipulated in *Article 17* of the "Outline of National Reconstruction."

*Art. 60.* The various Local Governments may, within their respective sphere of authority enact and ordain local laws and regulations. Where such laws and regulations are in conflict with those promulgated by the Central Government, they shall be null and void.

*Art. 61.* The demarcation of Central and Local Revenues shall be separately determined by Law.

*Art. 62.* The Central Government may restrict, by law, any local tax when

1. It is contrary to public interest,
2. It encroaches upon the source of Central revenue,
3. It constitutes overlapping taxation,
4. It is detrimental to communications,
5. It is unjustifiably imposed upon goods imported from other localities for the sole benefit of the locality concerned,
6. It is in the nature of a transit duty on commodities in circulation among various localities.

*Art. 63.* The power of granting patents and monopolies is vested in the Central Government.

*Art. 64.* When one of the provinces reaches the period of Constitutionalism, the division of power between the Central and the Local Governments shall be defined in detail by law in accordance with the "Outline of National Reconstruction."

## CHAPTER VII. ORGANIZATION OF THE GOVERNMENTS

### SECTION 1. THE CENTRAL GOVERNMENT

*Art. 65.* The National Government shall exercise all the governing powers of the Republic of China.

*Art. 66.* The National Government shall have supreme command over the land, naval and air forces.

*Art. 67.* The National Government shall have the power to declare war, to negotiate peace and to conclude treaties.

*Art. 68.* The National Government shall exercise the power of granting amnesties, pardons, reprieves, and restitution of civic rights.

*Art. 69.* The National Government shall exercise the power of conferring medals and decorations of honor.

*Art. 70.* The National Government shall compile and publish a budget and financial statement of the national revenues and expenditures for each fiscal year.

*Art. 71.* The National Government shall be composed of the following five Yuan: the Executive Yuan, the Legislative Yuan, the Judicial Yuan, the Examination Yuan and the Control Yuan; as well as various Ministries and Commissions.



*Art. 72.* The National Government shall have a President and an appropriate number of State Councillors, who shall be selected and appointed by the Central Executive Committee of the Kuomintang. The number of State Councillors shall be separately determined by Law.

*Art. 73.* The President of the National Government shall represent the National Government both internally and internationally.

*Art. 74.* The Presidents of the five Yuan and the Heads of the various Ministries and Commissions shall be appointed or dismissed in accordance with Law by the National Government at the instance of the President of the National Government.

*Art. 75.* All Laws shall be promulgated and Mandates issued upon the signature of the President of the National Government according to Law.

*Art. 76.* The various Yuan, Ministries, or Commissions may, according to Law, issue orders.

*Art. 77.* The organization of the National Government and of the various Yuan, Ministries and Commissions shall be separately determined by Law.

## SECTION 2. THE LOCAL GOVERNMENTS

*Art. 78.* In each province, a Provincial Government shall be established, which shall attend to the administration of provincial affairs under the direction of the National Government. Its organization shall be separately determined by Law.

*Art. 79.* When, as stipulated in Article 16 of the "Outline of National Reconstruction," a province reaches the period of Constitutionalism, the (Provincial) Assembly of People's Delegates may elect a Provincial Governor (Sheng Chang).

*Art. 80.* The system of local Government in Mongolia and Tibet shall be determined separately by Law in the light of the local conditions.

*Art. 81.* In each District (Hsien), a District Government shall be established, which shall attend to the administration of district affairs under the direction of the Provincial Government. Its organization shall be separately determined by Law.

*Art. 82.* In each of the districts, a District Autonomy Preparatory Committee shall be organized to carry out the

preparations as provided for in *Article 8* of the "Outline of National Reconstruction." Its organization shall be separately determined by Law.

*Art. 83.* Municipalities may be established in localities, where industry and commerce, population or other special conditions warrant. The organization of such Municipalities shall be separately determined by Law.

#### CHAPTER VIII. ANNEX

*Art. 84.* All laws which are in conflict with this Yueh Fa (Provisional Constitution) shall be null and void.

*Art. 85.* The power of interpreting this Yueh Fa shall be exercised by the Central Executive Committee of the Kuo-mintang of China.

*Art. 86.* A draft of the (Permanent) Constitution (Hsien-Fa) shall be prepared by the Legislative Yuan on the basis of the "Outline of National Reconstruction" as well as the achievements during the Political Tutelage and Constitutional Periods. The said draft shall be duly made known to the people at large in preparation for its adoption and enforcement at the opportune moment.

*Art. 87.* When a majority of the provinces in the country reach the period of Constitutionalism—that is, when District Autonomy has been completely instituted throughout each of such provinces—then the National Government shall immediately summon a National People's Congress (Kuo-Min-Ta-Hui) to decide upon the adoption and promulgation of the Hsien Fa (Permanent Constitution).

*Art. 88.* The present Yueh Fa (Provisional Constitution) shall be enacted by the National People's Convention (Kuo-Min-Hui-I) and forwarded to the National Government for promulgation.

*Art. 89.* The present Yueh Fa shall come into force from the date of promulgation.

## APPENDIX VIII

### THE DRAFT CONSTITUTION

Much has already been said about the draft constitution of Dr. John C. H. Wu, vice-chairman of the Constitutional Drafting Committee of the Legislative Yuan. That that instrument of the government is engaging the attention of those who are concerned with the constitutional and political development and progress of China is evidenced by the fact that constitutional studying associations are being organized in different places throughout the country. It seems appropriate, therefore, to write an article on such a significant subject as the draft constitution. Being as yet unaffiliated with any political party, the writer endeavors to be a non-partisan and to speak as his conscience dictates. But his words are the words of a critic, not of an adversary.

#### THE CONTENTS OF THE DRAFT

The draft of Dr. Wu consists of five parts: general principles, nationalism, popular sovereignty, the livelihood of the people and constitutional protection. It contains 214 articles which in point of length, surpasses both the Philadelphia and the Weimar constitutions. The first part declared the Republic of China to be a Republic of the Three Principles of the People, vests the sovereignty in the whole body of the people, defines Chinese citizenship and the territory of the Republic, provides legal equality for all classes of people, locates the national capital, and fixes the national flag.

The second part deals with the maintenance of the independence of the Chinese nation as well as its development. It requires the Government to resist foreign aggression and prohibits it to conclude treaties of cession based on military force. It denounces all secret agreements, recommends that proper diplomatic measures be taken toward revising or abrogating those treaties which are incompatible with the

principle of equality and reciprocity, recognizes international law as a part of the law of the land, and endeavors to develop the self-governing ability of the minority nationalities within China and to support and protect the overseas Chinese. It further stabilizes marriage and gives protection to persons under age, to illegitimate children and to women both before and after childbirth. Due care of the children in their intellectual, moral and physical development as well as filial piety towards parents are made legal duties. Things or places of historical and artistic value are to receive governmental protection.

The third part embraces a bill of rights and defines the National Congress of the People, the National Government, the President of the nation, the five Yuan, the provinces, the districts, the municipalities, and the apportionment of powers between the central and local governments. Among the many important things in the bill of rights may be mentioned the writ of *habeas corpus* and popular supervision over finance in addition to the right of freedom of conscience, of speech, of publication, of association, etc., and the restrictions placed on the Government.

The National Congress is to be organized on the principle of territorial rather than vocational representation, one delegate from each district or municipality. Its functions are to elect and recall the President and Vice-president of the nation, the members of the Legislative and Control Yuan, and the Presidents and Vice-presidents of the Judicial and Examination Yuan; to exercise the rights of initiative and referendum over national legislation; to determine the adoption, enforcement and modification of the national constitution; to receive petitions from the people; to investigate and approve the report of the National Government; to solve the problems presented by the National Government; to present its views on the fundamental policies of the nation and to interpellate the National Government. Two restrictions are, however, placed on the National Congress. First, it cannot change the form of the State. Second, it cannot transfer national sovereignty from the people to any other body.

The National Government is composed of the President and the five Yuan and is made responsible to the National Congress. Provision is made for a State or Government Council constituted by the President of the nation and the Presidents of the

five Yuan. The heads of the various departments and commissions of the Executive and Legislative Yuan may, however, attend the meetings of the Council on the request of the Presidents of their own Yuan. The Council is not a cabinet but an arbiter to settle any differences that may arise between two or more of the Yuan, and an organ through which collaboration between the five Yuan is secured. It also takes formal action regarding appointment and removal of officers above the rank of selected appointment (second class).

The President of the nation must be more than thirty-five years of age and is elected by the National Congress for a term of six years with no eligibility for reelection. He must be a citizen of the Chinese Republic. Provision is made for a Vice-president who must have the same qualification as that of the President and is similarly chosen. The President is the commander-in-chief of the land, naval and serial forces and is the official spokesman of the National Government. He and the President of the Executive Yuan are jointly responsible to the National Congress.

The Legislative Yuan is composed of a President and a Vice-president chosen from its own members and not more than two hundred members elected by the National Congress for a term of three years. It has the power to decide upon legislation, budgets, amnesties, declaration of war, negotiation for peace, conclusion of treaties and other important international affairs. The President of the nation as well as the Presidents of the Executive, Judicial, Control and Examination Yuan may introduce measures to the Legislative Yuan and speak there but they may not vote. The national chief executive does not possess the power of veto, suspensive or qualified, but he may request the Legislative Yuan to reconsider a bill before its promulgation. This power of requesting for reconsideration is also enjoyed by the Presidents of the five Yuan.

The Executive Yuan is headed by a President and a Vice-president who are chosen by the President of the nation and appointed by him on behalf of the National Government. They and the ministers and commissioners constitute a sort of cabinet, responsible for the administration of national affairs.

The Judicial Yuan is the highest judicial organ of the nation, consisting to a Supreme Court and a number of subordinate courts. Its President and Vice-president are elected by the

National Congress for a term of three years. The Supreme Court is vested with the power of unifying the interpretation of laws and ordinances, but it has no power to interpret the constitution and to declare laws null and void as is the case with the United States Supreme Court.

The Examination Yuan is in charge of examinations and civil service personnel. Its President and Vice-president are chosen in the same manner as those of the Judicial Yuan.

The Control Yuan is an impeaching and auditing organ. The number of its members is limited to fifty, all elected by the National Congress for a term of three years. The President and Vice-president of the Yuan are elected by its own members. Attached to the Yuan there is a Board of Audit headed by a Chairman and a Vice-chairman who are appointed by the National Government upon the recommendation of the President of Yuan for a term of ten years. To some the tenure may seem to be too long, but not in comparison to that of the Comptroller-general of the United States who enjoys a term of fifteen years.

In each province there is a Provincial Congress which is composed of representatives from the district and municipal assemblies and is empowered to nominate the Governor and to elect the members of the Provincial Assembly. From the point of view of its functions the Provincial Congress is a National Congress in miniature. The Governor is the administrative head of the province, nominated by the Provincial Congress and appointed by the National Government. In making the nomination the Congress presents a list of three candidates, one of whom is to be selected. This is a compromising measure between executive appointment and popular election. The Provincial Assembly is a legislative body entrusted with the power to decide upon legislation, finance, and other provincial affairs.

Like the communes in France the districts in China are the real administrative areas of the nation. Each has a magistrate and an assembly, all elected by the people. Municipalities may be created in localities where industry and commerce, population and other special conditions warrant. In the choice of the mayor and the members of the municipal assembly the principle of popular election is adopted. It is also in the districts and municipalities that three other devices of direct democracy known as initiative, referendum and recall are employed.

In the distribution of powers between the central and local governments the American principle is adopted, that is, the powers of the national government are enumerated and those of the provinces are, by implication, residuary. The national government has jurisdiction over the following: nationality; civil, criminal and procedural laws; justice, national defense and the military system; diplomacy and overseas Chinese affairs; examinations; weights, measures, and currency; national banks and national taxation; posts, telegraphs, and other means of land, water and air communication or transportation; national reconstruction; state monopolies, trade marks, and other public enterprises. On these matters the national government may not only make laws, but also put them into effect. Here again the Chinese system resembles the American, for in the United States the federal government has its own officers and machinery to enforce its laws, a practice different from that in Germany where the execution of federal laws depends upon state officers. The proposed Chinese policy of administrative centralization makes for the strict enforcement of the laws of the nation. There are certain matters, however, the execution of which may be left to the provincial governments. These include supervision, census, land system, local political system, education and culture, emigration and reclamation, financial supervision, banks, insurance, sanitation, prevention of epidemics, medicine, mining, forestry, fishing, the irrigation and the water and land communication of more than two provinces. Although the draft intends to maintain an equilibrium in the allocation of powers between the nation and the provinces, the national government seems to have the large share.

In the compilation of the budget, both national and local, legislative sanction is required. In addition, all Chinese citizens may, by application, investigate the financial record of all government offices. Thus through the control of the purse the Chinese people control the government.

The fourth part aims to promote the welfare of the laborers, the farmers, the aged, and those who are physically incapacitated. Laws are to be enacted to prevent not only the misuse and waste of land but also the vast accumulation of real estate by the few. Heavy interest and high rental rates are prohibited. Inheritance taxes are to be enforced, coöperative and insurance enterprises to be encouraged and promoted,

and public hospitals to be established. The production of necessities as well as their prices are to be regulated by the government, considering, of course, their demand and supply. All children are required to receive at least six years' education which is to be free. Cultural research is encouraged. Economic councils of the German type are to be established, which are to make recommendations to the government concerning all economic legislation and administration, to introduce economic measures to the Legislative Yuan, to promote coöperation between the government on the one hand and the farming, the laboring, the commercial and the industrial groups on the other, and to settle labor disputes. Economic enterprises in rural districts are to be promoted. Such enterprises include reclamation of waste land, irrigation, the establishment of financial agencies, the encouragement of coöperative enterprises, the prevention of famine and the storing of food provisions, the development of agricultural education and the betterment of the livelihood of the farmers. the building of farmhouses and roads, etc.

The last part is on constitutional protection. It declares all laws which run contradictory to the constitution to be null and void. It provides that constitutional amendment may be proposed either by one-fourth of the members of the National Congress, or by one-fourth of the Provincial Congresses, or by one-fourth of the vocational groups in all the provinces. All amendments, in order to become effective, must, however, be adopted by two-thirds of the members of the National Congress present at a quorum of two-thirds of the whole number. A Court of State Affairs, similar to the Austrian Constitutional Court, is also to be brought into existence. Its function is to interpret the constitution, to investigate into the legality of all laws and ordinances, and to declare them null and void should they conflict with the constitution, to determine upon the punishment of constitutional violation, to settle all differences between the government offices of the national government, between the local governments, and between the national government on the one hand and the local governments on the other, to adjudicate administrative cases, to unify the interpretation of administrative laws and ordinances, to receive all cases of impeachment, and to settle all cases concerning constitutional violation which ordinary courts are incompetent to adjudge. The Court consists of from eleven



to fifteen Councillors (judges). More than half of them are directly elected by the National Congress, the rest are nominated by the five Yuan but are ultimately chosen by the National Congress. In the matter of nomination each Yuan is entitled to present two or more candidates. No Councillor is subject to recall unless the proposal is approved by a majority of the members of the National Congress present at a quorum of two-thirds of the whole number. In case a joint impeachment against a Councillor is agreed upon by the Control and the Legislative Yuan, the Councillor concerned may be transferred, suspended, or removed from office provided that a commission composed of two representatives from the Legislative and the Control Yuan respectively and five judges from the Supreme Court should so decide. In like manner his salary may be reduced.

#### FEATURES OF THE DRAFT CONSTITUTION

Having analyzed the draft constitution, it is but fitting and proper to point out its salient features. First of all, the draft aims to accomplish the purpose of the Three Principles of the People. This purpose we see expressed in the arrangement of the contents of the draft, as well as in its formal declaration that the Republic of China is to be a Republic of the Three Principles of the People. The Three Principles of the People are more than the principles of one party, they are the principles of national salvation. That they point the way to salvation is indicated by their endeavor to liberate China from the grip of unilateral treaties and all other forms of imperialistic encroachments, to make equal all the nationalities within Chinese territory, to accord to the people the rights of election, initiative, referendum, and recall, to equalize land and to regulate capital. It is not strange, therefore, that they should find expression in the draft. To reject them on the ground that they are the Kuomintang product would be as unreasonable as to reject the science, medicine, law, religion and philosophy of the West because they are not Chinese.

Secondly, there is the National Congress, the reservoir of national sovereignty, which is vested with the power of initiative and referendum concerning national legislation, of election and recall of the officers of the national government, and of amending the constitution. Although the National Congress

is the supreme organ of the nation, the fact that it is to be composed of nearly two thousand members and that its session is to last only for a few weeks indicates that its functions are primarily supervisory. But because of its constituent power, the significance of the Congress cannot be overlooked.

Thirdly, the manner in which the Presidents of the five Yuan are chosen constitutes a unique feature. As has been pointed out, the Presidents of the Legislative and Control Yuan are chosen by the members of their own Yuan, those of the Judicial and Examination Yuan by the National Congress, and that of the Executive Yuan by the President of the nation. This manner of choosing the heads of the various Yuan may seem to be objectionable because of its irregularity. But in considering the different functions performed by the five Yuan as well as their organization, it is not unreasonable. The Legislative and Control Yuan have their own members (the former not more than two hundred, the latter not more than fifty), but the Judicial and Examination Yuan are composed of only administrative officers. The plan of delegating the electoral power to the National Congress and the members of the Legislative and Control Yuan is adopted mainly for the sake of expediency. True, uniformity is sacrificed; but the lack of uniformity is compensated for by a gain in efficiency.

Fourthly, the way in which the relation between the nation and the President of the Executive Yuan is determined is another feature of the draft. Unlike the French President who neither reigns nor governs, the future Chinese President is a real executive, the directing head of the national administration. Hence, his relation to the President of the Executive Yuan bears close resemblance to that between the American President and the Secretary of State who is a senior member of the cabinet and is, in a certain sense, a *primé* minister. In other words, the Chinese national executive is the political chief and the President of the Executive Yuan his subordinate. To many the presidential form of government is objectionable, because it may give rise to a dictatorial government. But in view of China's strained relations with Japan, a strong centralized government, which only the presidential system can bring into being, is much preferred.

Fifthly, the draft constitution lays great emphasis on the well-being of the people, although it has not gone into detail with respect to the regulation of capital and the equalization

of land. Its system of economic councils, similar to those in Germany, and its stress on public education, on rural development and on coöperative and insurance enterprises are all intended to better the livelihood of the people.

Sixthly, the distribution of powers between the nation and the provinces in accordance with the American principle makes the form of government federal rather than unitary. The federal system has its opponents in China and elsewhere on account of its weakening of the authority of the central government, its liability to secession and civil war, and its need for a judicial tribunal to settle differences between the central government and the provincial governments regarding their respective jurisdiction. While these weaknesses are recognized, a careful study of articles 154 to 157 inclusive shows that the powers enumerated in the constitution belong exclusively to the national government and that they are quite comprehensive in scope. If the national government should completely assert its jurisdiction, the government in China would be federal in form but unitary in spirit.

Lastly, the draft constitution makes provision for a Court of State Affairs, which is not only to interpret and protect the constitution but also to adjudge administrative cases. In other words, this tribunal is a Supreme and Administrative Court combined. Questions have been raised as to why the functions of the Court are not delegated to the Supreme Court of the Judicial Yuan. One answer to such questions would be that the Supreme Court has already enough to do as a court of final jurisdiction and that the function of interpreting and protecting the constitution and of handling administrative cases necessitates the creation of a special organ.

#### POINTS TO BE RECONSIDERED

Several points in the draft need, however, to be reconsidered. First, the method of choosing the members of the Legislative and Control Yuan is not entirely satisfactory in that it has the disadvantages of the long ballot system. The Legislative Yuan has two hundred members and the Control Yuan fifty. For each representative of the National Congress to vote for two hundred fifty members would be an extremely difficult, if not impossible, task. The system of popular election would, therefore, seem to be desirable. The country may be divided

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two hundred legislative or fifty supervisory districts from of which one delegate is to be chosen by the people. Or it may be divided into a fewer number of districts, which necessarily be larger in area and from which two or more gates will be chosen. The former is known as the single member district system and the latter the general ticket system. The proposed schemes will not only shorten the ballot but also be more democratic in principle.

Second, the draft constitution fails to make provision for a Central Executive Committee which is necessary in view of the large size and short session of the National Congress. That latter institution would exercise the functions of the National Congress when the latter is not in session, except that it has no power to recall the President and Vice-president of the nation and to amend the constitution should belong exclusively to the National Congress.

Third, in the matter of recalling the President of the nation the draft makes no detailed provisions. The procedure should be made rigid so that recall may be proposed only on specific grounds such as treason, bribery and other high crimes or misdemeanors.

Fourth, in defining the scope of the National Government and the organization of the State Council the draft does not mention the Vice-president of the nation. It seems only logical that he should have places in both, since he is next to the chief of state.

Fifth, the Chinese system of framing the budget by an independent office rather than by the Ministry of Finance marks a departure from the practice in western countries, where the principle of executive initiation is maintained. Whatever advantages may be claimed for the Chinese system, it is an undeniable fact that the executive is responsible for the efficient administration of government activities and known best to the administrative needs of the country. For the Chu Chi u (the Budget Office), which is neither an organ of the Ministry of Finance nor of any administrative department, to compile the budget is, therefore, hardly conducive to the best interests of the country. Moreover, the division of responsibilities, that of providing revenues and that of compiling estimates of expenditure, between the Ministry of Finance and the Budget Office would cause a great deal of difficulty in securing a balanced budget.

## CONCLUSION

No matter what may be said of the proposed constitution, it is certain that the document has been drafted after careful consideration of the conditions and needs of the country. The non-partisan character of the author and his endeavor to free himself from all bias and prejudices have made the instrument one of great value.

However good the constitution may be, there is little hope for China to create and to maintain a constitutional government unless three conditions are fulfilled. First, there must be a lawabiding spirit on the part of the people. Second, there must be constitutional morality, the determination to support the constitution on the part of both those who govern and those who are governed. Third, there must be no civil war; ballots must replace bullets. Thus the constitution comes as a challenge to coöperative action. Let us patriotic citizens unite so that we may stand!

## APPENDIX IX

### FUNDAMENTALS OF NATIONAL RECONSTRUCTION<sup>1</sup>

1. The National Government's program for the reconstruction of China is based on the revolutionary principles known as the "San Min Chu I" and the "Five-power Constitution."
2. The first and foremost element of reconstruction is livelihood. In order to meet the pressing needs of the people for food, clothing, shelter, and roads, the government should cooperate with the people to improve agriculture in order to provide them with sufficient food, to develop the cotton industry in order that they may have abundant material for clothing, to build houses on a large scale in order that they may procure comfortable shelter, and to construct new roads and canals and repair the existing systems so as to facilitate traffic.
3. The next element of reconstruction is democracy. To enable the people to be competent in their knowledge of politics, the government should undertake to train and guide them so that they may know how to exercise their rights of election, recall, initiative, and referendum.
4. The third element of reconstruction is nationalism. The government should undertake to render assistance and protection to the racial minorities in the country (Manchus, Mongols, Tibetans, etc.) so that they may be able to exercise their right of self-determination and self-government, while resisting oppression and invasion from foreign countries. The government should, at the same time, revise the treaties with foreign

<sup>1</sup> Dr. Sun Yat-sen: *His Life and Achievements*, The Publicity Department of the Central Executive Committee of the Kuomintang, pp. 33-37.

countries in order to secure national independence and international equality.

5. The order of reconstruction is divided into three periods, namely:
  - (a) Period of Military Operations;
  - (b) Period of Political Tutelage;
  - (c) Period of Constitutional Government.
6. During the period of military occupation the entire country should be subject to military rule. To hasten the unification of the country, the Government should employ military force to conquer all opposition in the country and propagate the principles of the Party so that the people may be enlightened.
7. The period of political tutelage in a province should begin and military rule should cease as soon as order within the province is completely restored.
8. During the period of political tutelage the government should dispatch trained officers who have passed the examinations to the different districts to assist the people in making preparations for local self-government. The attainment of local self-government depends on the completion of the census, the survey of the district, the organization of an efficient police force, and the construction of roads throughout the district. Moreover, the people of the district must be able to fulfil their duties as citizens by exercising the four rights mentioned above, and must pledge themselves to carry out the principles of the revolution, before they are entitled to elect the officer of a "hsien" for the administration of its affairs and representatives of the "hsien" for the formulation of its laws. By that time, the "hsien" will then be considered as fully self-governing.
9. The citizens of a fully self-governing "hsien" have the right of direct voting for the election of officers, the right of direct recall, the right of direct initiative, and the right of direct referendum.
10. At the beginning of self-government it is imperative that a declaration be made of the value of private-owned land of the district, the procedure being to require the owners to make their own declaration at the local administration so that the tax will be imposed

according to the declared value, but the local government is entitled at any time to purchase the property at the declared value. Any increase in value as a result of improvement in the administration and progress of the whole community shall be set aside for the benefit of the whole community, and the original owners are not allowed to reserve it for themselves. "

11. The annual revenue from land, the increase in land value, the production from public land, the income from forestry, rivers, mines, and waterfalls shall be reserved for the local government and shall be devoted to the development of industries, the taking care of the young, aged and poor, the relief of public calamities, the care of the sick, and other public needs.
12. If a district does not possess sufficient capital to develop its natural resources or industries and commerce on a large scale and must seek the aid of outside capital, the Central Government should give the necessary financial assistance and the profits accruing therefrom shall be equally divided between the Central and the Local governments.
13. The contribution of the districts toward the expenditure of the Central Government shall be a certain percentage on their revenue. The percentage shall be fixed annually by the People's Representatives, and shall not exceed 50 per cent, nor be less than 10 per cent, of the total receipts.
14. After self-government has been established, the people in each district shall be entitled to elect a representative for the formation of an assembly to participate in the political affairs of the nation.
15. All officials, to be elected or appointed locally or by the Central Government shall be required to pass an examination to be held by the Central Government before they are qualified for their positions.
16. As soon as all the districts within a province are fully self-governing, constitutional government in that province shall begin and the assembly of the People's Representatives may elect a provincial chief officer to supervise the administration of the self-government of the province. As regards the national affairs of the province, the provincial chief officer shall be subject



- to the guidance of the Central Government.
17. During the period of constitutional government, the powers of the Central Government and those of the provinces shall be evenly distributed. Affairs of a national character shall be reserved for the Central Government and those of a local character shall be reserved for the districts. The system is neither a centralization nor a decentralization.
  18. The "hsien" is the unit of self-government. The province links up and provides means of coöperation between the Central Government and the Local Governments of the districts.
  19. At the beginning of constitutional government, the Central Government should complete the establishment of five "yuans" for the exercise of the five-powers, the order being as follows: (1) Executive Yuan, (2) Legislative Yuan, (3) Judicial Yuan, (4) Examination Yuan and (5) Control Yuan.
  20. The Executive Yuan shall at the outset consist of the following ministries: (1) Ministry of the Interior, (2) Ministry of Foreign Affairs, (3) Ministry of Military Affairs, (4) Ministry of Finance, (5) Ministry of Agriculture and Mines, (6) Ministry of Industry, Commerce and Labor, (7) Ministry of Education, and (8) Ministry of Communications.
  21. Before the promulgation of the constitution, the presidents of all the "yuans" shall be appointed or dismissed by the President, who shall supervise them.
  22. The draft constitution shall be based on the Programme (Fundamentals) of National Reconstruction as well as the experiences gained during the periods of Political Tutelage and Constitutional Government, and shall be drawn up by the Legislative Yuan through which it shall be made known to the people in order that when the time arrives it will be deliberated and adopted.
  23. When more than half of the provinces in the country have reached the Constitutional Government stage, i.e., more than half of the provinces have local self-governments fully established in all the districts there shall be a National Congress to decide on the adoption and promulgation of the Constitution.

24. As soon as the constitution is promulgated, the administration of the Central Government shall be vested in the National Congress. In other words, the National Congress has the power to elect and recall officials of the Central Government and to initiate laws and veto laws promulgated by the Central Government.
25. On the day of the promulgation of the Constitution, constitutional government shall be considered as having been fully established and the people throughout the country shall hold a national election according to the constitution. Three months after the election, the National Government shall resign and hand over its functions to a government elected by the people, and the programme of national reconstruction will thus be accomplished.

## APPENDIX X

### MANIFESTO OF THE FIRST NATIONAL CONGRESS OF THE KUOMINTANG

*(January, 1924)*

#### THE PRESENT CONDITION OF CHINA

The Chinese Revolution had its inception after the Sino-Japanese War was brought to a head in 1900, and achieved its success in 1911, by which the Monarchical Government was eventually overthrown. But a revolution cannot arise all of a sudden. Since the occupation of China by the Manchus there reigned in the hearts of the Chinese race the feeling of injustice for a long time. After the country was thrown open to international commerce, foreign imperialism came like an angry tide. Armed plundering and economic pressure reduced the country to a semi-colonial status, and caused her to lose her independence. The Manchu Government not only possessed no ability to repulse foreign invasion, but also persisted in an increasing degree in the policy of subjugating the "slaves" at home, thereby courting favor with the foreign Powers. Under the leadership of Dr. Sun Yat-sen, the founder of the Kuomintang, the comrades of our party have realized that unless the Manchu Government was overthrown there would be no hope for the reconstruction of China. Therefore they rose valiantly to be the vanguard of the people and proceeded with great rapidity until 1911, when the task of overthrowing the Manchu Government was at last achieved. But it is clear that the aim of the Revolution was not confined to the overthrow of the Manchus, but that with their overthrow we shall be able to undertake the work of reconstruction. According to the circumstances then obtaining we ought to be able: in the racial aspect to proceed from the dictatorship to the system of popular sovereignty; and in the economic aspect, to proceed from handicraft production to capitalistic production. Proceeding in this way it cannot fail to change the semi-colonial

China into an independent China, standing proudly in the world.

But the realities of that time were indeed contrary to our expectations. Although it was said that the Revolution had succeeded, what the revolutionary Government was able to effectively express was only the principle of racial emancipation. And in what a short time it was compelled by circumstances to compromise with the reactionary class of absolutism! Such compromise is indirectly a concession to imperialism, and was the basic reason for the first defeat of the Revolution. The representative of the reactionary class of absolutism at that time was Yuan Shih-kai. The Power that he possessed was not strong. But the fact that the revolutionary comrades were not able to crush him was due to their earnest desire to avoid a prolongation of the civil war in the country as well as to the lack of a party that possessed organization and discipline and understood its own mission and aims. Were such a party in existence, it would be able to defeat the plot of Yuan Shih-kai and achieve success. The leaders of the northern militarists were always conspiring with the imperialists, and all the reactionary classes of absolutism, such as the militarists and the politicians, depended upon them for their livelihood. Since the revolutionary comrades had consigned the political power to them, it was small wonder that defeat was the outcome.

The death of Yuan Shih-kai did not change the fortune of the Revolution—in fact, it went from one defeat to another. The result was that the militarists of the country were able to play the part of executioners and the people the victims. Any political reconstruction based on the principle of popular sovereignty was out of the question. Furthermore, the fact that the militarists were not able to live independently drove them to establish connections with the imperialists, one and all. Even the so-called Government of the Republic was under the thumb of the militarists, and they utilized it to court favor with the imperialists so as to strengthen their own positions. The imperialists in their turn utilized them, furnishing them with loans to fill their war chests so that the civil war is prolonged, and the imperialists were able to fish in the troubled waters and carve out the country's vital interests into spheres of influence. From this point of view, it is clear that the internal warfare of China is conferring advantages on

the imperialists. The imperialists in their conflicts of interests again sought the support of the militarists, to kill the people for their own interests. In addition, the chaotic condition of the country acted as a check on the development of the internal industries of the country, giving the foreign goods added opportunities to reign supreme in the market. So the Chinese industries cannot even compete with foreign capitalists on the home market. The cruelty of such a catastrophe is that not only our political life but also our economic life will be exterminated. Glancing around the country, it will be seen that the middle class, after the repeated reverses of the Revolution, is suffering increasing hardships. The small merchants are becoming bankrupt; the small handicraft workers are losing their work, degenerating into vagrants and bandits; and then farmers, unable to till their own land, are selling out at cheap prices, as the cost of living is becoming dearer and the taxes are becoming heavier. Such conditions of desolation are found on every hand. What can be said of these conditions except that they are signs of desperation?

From this point of view, the condition of the country since the Revolution of 1911 had not only not progressed, but, on the contrary, it has retrogressed. The reign of arbitrary power of the militarists and the invasions of the imperialists are getting worse every day, causing her to sink deeper into the hell of a semi-colonial status. This condition is what makes the people of the whole country indignant and the thinking men of the country restless until a way out is found.

What is, then, the way out? Regarding this, every party in the country and every man, and even foreign residents, entertained different opinions. They may be grouped in the following categories, with our criticism attached.

First, there is the constitutional school of opinion. According to this group of men, China's trouble lies in the lack of law. If the country can be united under a constitution, then the chaotic condition will be remedied. The trouble with this school is that they forget that the effectiveness of a constitution is conditioned on the support of the people. Without such support, a constitution alone in black and white will not be able to guarantee the sovereignty of the people against the attacks of the militarists. We had indeed the Provisional Constitution since the first year of the Republic, but even then the militarists and the politicians representing the remnants

of absolutism usurped power and were able to institute a reign of crime. So long as these people are in existence, there will be no use for the constitution. In that case the constitution is but waste paper, and what good will it do to the sovereignty of the people? One has not forgotten that Tsao Kuan was able to bribe himself into power only under the shadow of a constitution; but what he did was entirely contrary to the constitution. Therefore the prerequisite question of the establishment of a constitution was whether the people were able to guard it. There is no use putting the cart before the horse. What is more, if the people are not organized, the presence of a constitution will not mean that they will be able to use it; and in such a case, even if there is no militarist to attack it, it will remain a dead letter only. So the fault with this school is that they only know that a constitution is what is wanted without thinking what is the means of supporting and putting it into practice. This school is therefore without the organization, the means, and the courage to fight for a constitution. In conclusion, it is certain that the establishment of a constitution will not come until the power of the militarists and imperialists is overthrown.

Secondly, there is the federal school of opinion. According to this school, the chaotic phenomenon of the country is due to the over centralization of power in the hands of the central government, and therefore, it must divide the power among the provincial governments. When local self-government is established, the central government will be powerless to do wrong. This school forgets that the power of Peking to-day is not conferred by the people under any law, but is snatched by the big militarists. The big militarists used their armed power to capture the central government, and in turn utilized it to expand their armed power. The suggestion of this school amounts to this much, that the power of the small militarists of the provinces shall be utilized to curtail the power of the central government, leaving the big militarists in control of it to perpetrate crimes. Where is the logic in this reasoning? The inevitable result will be that the small militarists will be enabled to establish their governments in the provinces side by side with the big militarists, each for his own benefit, and the country will thus be in a partitioned state. This state of affairs is not characterized by any order or government. It is true that real self-government is the highest good and answers

the demands and the spirit of our people. But such real self-government cannot be achieved until the country as a whole has achieved its independence. Now, China as a whole has not secured its independence, and it would be impossible to secure first the independence of any of its parts. Therefore, struggle for self-government cannot proceed independently from the struggle of the movement for national independence. Only within a free China can there be free provinces. The political, economic, and social problems within a province are only soluble within the scope of the whole country. Therefore, the realization of real self-government of the provinces will only be possible after the success of the interests of the revolution of the whole country. We recommend this analysis to the consideration of the whole country.

Thirdly, there is the school of opinion favoring peace conferences. The country has suffered long from the civil war, and suggestions of holding peace conferences came as a natural result. These suggestions are not confined to the Chinese, but there are foreigners also. If we can achieve peace in this way, nothing can be better. But the trouble is that these suggestions defeat their own purposes. Let us see why. The civil war is created directly by the competing militarists. In seeking their own interests these militarists stand in absolute opposition to one another, and there was no ground for any compromise. Even if there were, it would not amount to more than the compromise between the interests of the militarists, and it had nothing to do with the interests of the people. It would be a union of the militarists and not the union of the country, and what will it bring to the people? The result of such peace conferences will in no way be different from the results of the peace conferences of Europe, where the peace of the small nation is sacrificed to the competing interests of the big Powers. The fact that China was not able to get unity was due to the interests of these Powers. If one knows the impossibility of peace, but entertains the illusion that the parties to this struggle will seek a sort of equilibrium and avoid conflict, thereby securing a temporary truce, it would be entirely a dream. The reason is that in fact there is no power to prevent one militarists attacking another; and since all militarists possess mercenary troops, the inevitable result is plundering and war. It is, of course, easier to plunder other provinces than to plunder one's own province.

Fourthly, there is the school of opinion advocating government by the merchant class. The originator of this opinion viewed the trouble as arising from the militarists and politicians, and therefore, the capitalists ought to rise to take their place. But if militarists and politicians incurred the hatred of the people, due to the fact that they do not represent the people, we must ask in the first place, can the merchants represent the interests of the masses of the people? In the second place, we must know that the militarist government incurred the increasing hatred of the people because it depended on the protection of the foreign Powers. The merchant government will also be under the protection of the foreign Powers, and in that case it is nothing different from the militarist government. Although one cannot be opposed to a merchant government as such, our demand is that the masses of the people will organize the government themselves, to represent the interests of the whole people, and not confine it to those of the merchant class. And that government must be one which is independent and does not seek the help of others. It must depend on the will of the whole of the masses of the people.

A brief survey of the above currents of thought has shown that some of them proceeded from a sincere desire to save the country, but result only in chimeras, while others are the outcome of malicious criticism lacking in all sincerity.

The Kuomintang is always of the opinion that the only way out for China is to realize the Three Principles through the Nationalist Revolution. Reviewing the present situation of China, we are more confirmed in our view that the Nationalist Revolution cannot be delayed. We therefore submit to the people of the whole country a detailed presentation of the principles and the political platform of the Kuomintang.



APPENDIX XI

DECLARATION OF THE NATIONALIST  
GOVERNMENT AND INTERIM  
REGULATIONS<sup>1</sup>

(July 1928)

"The Nationalist Government, with a view to adapting themselves to the present day circumstances and with the object of promoting the welfare of and the friendly relations between China and different countries, have always considered the abrogation of all the unequal Treaties and the conclusion of new Treaties on the basis of equality and mutual respect for territorial sovereignty as the most pressing problem at the present time. These aims have been embodied in declarations repeatedly made by the Nationalist Government.

"Now that the unification of China is an accomplished fact, it is the task of the Nationalist Government to make every effort to fully realize these aims. While they will continue to afford protection to foreign lives and property in China, according to law, the Nationalist Government hereby make the following specific declaration with regard to all the unequal Treaties:

"(1) All the unequal Treaties between the Republic of China and other countries, which have already expired, shall be *ipso facto* abrogated, and new Treaties shall be concluded.

"(2) The Nationalist Government will immediately take steps to terminate, in accordance with proper procedure, those unequal Treaties which have not yet expired, and conclude new Treaties.

"(3) In the case of old Treaties which have already expired, but which have not yet been replaced by new Treaties, the

<sup>1</sup> *China Year Book*, 1929-30, pp. 824, 825.

Nationalist Government will promulgate appropriate interim regulations to meet the exigencies of such situation."

"1. Foreign countries and foreigners, as designated in these Regulations, apply only to those foreign countries and the nationals thereof whose Treaties with China have already expired, and with whom new Treaties have not yet been concluded.

"2. All diplomatic officials and consular officials of foreign countries stationed in China shall be entitled to proper treatment accorded under international law.

"3. The persons and properties of foreigners in China shall receive due protection under Chinese Law.

"4. Foreigners in China shall be subject to the regulations of Chinese Law and the jurisdiction of Chinese Law Courts.

"5. Pending the enforcement of the National Tariff Schedule, the regular customs duties on commodities imported into China from foreign countries or by foreigners, and those exported from China to foreign countries, shall be collected in accordance with the existing tariff schedule.

"6. All taxes and duties which Chinese citizens are under obligation to pay shall be payable equally by foreigners in accordance with the law.

"7. Matters not provided for by the foregoing Regulations shall be dealt with in accordance with International Law and Chinese Municipal Law."

## APPENDIX XII

### TREATY REGULATING TARIFF RELATIONS BETWEEN THE REPUBLIC OF CHINA AND THE UNITED STATES OF AMERICA

*(Signed at Peiping, July 25th, 1928; Ratifications Exchanged  
at Washington, February 20th, 1929)*<sup>1</sup>

The Republic of China and the United States of America both being animated by an earnest desire to maintain the good relations which happily subsist between the two countries and wishing to extend and consolidate the commercial intercourse between them, have, for the purpose of negotiating a treaty designed to facilitate these objects, named as their Plenipotentiaries:

The Government Council of the Nationalist Government of the Republic of China:

T. V. Soong, Minister of Finance of the Nationalist Government of the Republic of China;

and the President of the United States of America:

J. V. A. MacMurray, Envoy Extraordinary and Minister Plenipotentiary of the United States of America to China; who, having met and duly exchanged their full powers, which have been found to be in proper form, have agreed upon the following treaty between the two countries.

#### *Article I*

All provisions which appear in the Treaties hitherto concluded and in force between China and the United States of America relating to rates of duty on imports and exports of merchandise, drawbacks, transit dues and tonnage dues in China shall be annulled and become inoperative, and the principle

<sup>1</sup> *China Year Book: 1929-30*, pp. 827, 828.

of complete national tariff autonomy shall apply subject, however, to the condition that each of the High Contracting Parties shall enjoy in the territories of the other with respect to the above specified and any related matters treatment in no way discriminatory as compared with the treatment accorded to any other country.

The nationals of neither of the High Contracting Parties shall be compelled under any pretext whatever to pay within the territories of the other Party any duties, internal charges or taxes upon their importations and exportations other or higher than those paid by nationals of the country or by nationals of any other country.

The above-provisions shall become effective on January 1st, 1929, provided that the exchange of ratifications hereinafter provided shall have taken place by that date; otherwise, at a date four months subsequent to such exchange of ratifications.

### *Article II*

The English and Chinese texts of this Treaty have been carefully compared and verified; but, in the event of there being a difference of meaning between the two, the sense as expressed in the English text shall be held to prevail.

This Treaty shall be ratified by the High Contracting Parties in accordance with their respective constitutional methods, and the ratifications shall be exchanged in Washington as soon as possible.

In testimony whereof, we, the undersigned, by virtue of our respective powers, have signed this Treaty in duplicate, in the English and Chinese languages and have affixed our respective seals.

Done at Peiping, the twenty-fifth day of the seventh month of the seventeenth years of the Republic of China, corresponding to the twenty-fifth day of July, nineteen hundred and twenty-eight.

(Signed) TSE-VUNG SOONG

(Signed) J. V. A. MACMURRAY

## APPENDIX XIII

### CONVENTION AND AGREEMENT FOR THE RENDITION OF WEIHAIWEI

*(Signed at Nanking, April 18th, 1930)*<sup>1</sup>

His Excellency, the President of the National Government of the Republic of China, and

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India.

Desiring that the territory of Weihaiwei leased by China to His Britannic Majesty under the Convention of the 1st July 1898, should be restored in full sovereignty to China, have resolved to conclude a Convention for that purpose and to that end have appointed as their Plenipotentiaries:

His Excellency the President of the National Government of the Republic of China:

Dr. Chengting T. Wang, Minister for Foreign Affairs of the Republic of China;

His Majesty the King of Great Britain, Ireland and the British Dominions beyond the Seas, Emperor of India:

For Great Britain and Northern Ireland:

Sir Miles Wedderburn Lampson, K. C. M. G., C. B., M. V. O., His Majesty's Envoy Extraordinary and Minister Plenipotentiary to the Republic of China;

Who, having communicated their full powers, found in good and due form, have agreed as follows:

#### *Article I.*

The territory of Weihaiwei, as delimited by the boundary stones fixed by the Boundary Commission of 1899-1901, comprising a belt of land 10 English miles wide along the entire

<sup>1</sup> *China Year Book*: 1931, pp. 483-486.

coastline of the Bay of Weihaiwei and including Liukungtao and all other islands in the Bay of Weihaiwei, is hereby returned by His Britannic Majesty to the Republic of China.

### *Article II*

The Convention for the lease of Weihaiwei, concluded on the 1st July 1898, is hereby abrogated.

### *Article III*

The British garrison now stationed in the territory of Weihaiwei, including Liukungtao, shall be withdrawn within one month from the date of the coming into force of the present Convention.

### *Article IV*

The Government of the United Kingdom of Great Britain and Northern Ireland will hand over to the National Government of the Republic of China such archives, registers, title deeds and other documents in the possession of the British Administration in Weihaiwei as may be useful for the transfer of the administration, as well as those that may be useful for the subsequent administration of the territory by the National Government.

### *Article V*

The Government of the United Kingdom will present to the National Government of the Republic of China all lands and buildings in the territory of Weihaiwei belonging to the first-named Government.

### *Article VI*

The Government of the United Kingdom will hand over to the National Government of the Republic of China, without compensation, all works and purchases, including the steam launch "Gallia," made under the special levy in respect of the Victory Pier and the Wukou Improvement Scheme.

### *Article VII*

The Government of the United Kingdom will present to the National Government of the Republic of China the Chefoo-

Weihaiwei cable and the Government stores, including those detailed in Annex I.

*Article VIII*

The Government of the United Kingdom will hand over to the National Government of the Republic of China free of charge the Civil Hospitals at Port Edward and Wenchuantang, including land and buildings and present equipment.

*Article IX*

The Government of the United Kingdom will return to the National Government of the Republic of China all land previously owned by the Chinese Government on Liukungtao, together with the buildings thereon, and will further hand over all the land subsequently acquired by purchase and all Crown leases in respect of sites in that island with the reversionary interest in the buildings on the land so leased.

*Article X*

The transfer of the Administration of Weihaiwei and the transfer of public properties in the said territory, as well as of other matters under the present Convention, shall take place on the day of the coming into force of the said Convention.

*Article XI*

When the National Government of the Republic of China assumes the administration of the territory of Weihaiwei after rendition the existing regulations, including land and house tax, sanitary and building regulations, and policing will as far as possible be maintained.

*Article XII*

All documents of title to land, deeds of conveyance and mortgage and Chihchao under the British Weihaiwei Waste Land Ordinance No. 6 of 1919, issued to Chinese owners by the British Administration of Weihaiwei in the form prescribed within the territory of Weihaiwei, shall, subject to the terms contained therein, be recognized as being of the same validity

as during the British administration, unless the documents of title are contrary to Chinese law making revision or issue of additional documents of title necessary.

### *Article XIII*

All documents of title to land issued to persons other than Chinese by the British Administration of Weihaiwei in the prescribed form shall be exchanged for Chinese deeds of perpetual lease in the same form as those recently issued by the Chinese authorities to foreign lot holders in the former British Concession at Chinkiang, a registration fee of \$1.00 per mow being charged.

All leases issued by the British Administration of Weihaiwei will be recognised by the National Government of the Republic of China.

If the National Government of the Republic of China should decide to close the port of Weihaiwei to foreign residence and trade, with a view to utilising it exclusively as a naval base, the interests of the foreign property owners and lease holders will be bought out at a fair compensation to be agreed upon between the Governments of China and the United Kingdom who will appoint a joint commission for determining the amount of this compensation in each case.

### *Article XIV*

The National Government of the Republic of China will maintain the existing public services employing such staff as it may select, including particularly the telephone service on the mainland and connection with the island and the telegraph service between Weihaiwei mainland and island and Chefoo.

### *Article XV*

All decisions of the British Weihaiwei High Court or magistrates' courts pronounced before rendition shall be considered after rendition to have the same force and effect as if they were decisions rendered by Chinese Courts of Justice.

### *Article XVI*

The National Government of the Republic of China will, unless and until they decide to close the port of Weihaiwei



and reserve it exclusively as a naval base, maintain it as an area for international residence and trade, including within such area all places in which foreign property owners and lease-holders are at present located.

#### *Article XVII*

Pending the enactment and general application of the laws regulating the system of local self-government in China, the Chinese local authorities will ascertain the views of the foreign residents at Weihaiwei in such municipal matters as may directly affect their welfare and interests.

#### *Article XVIII*

The National Government of the Republic of China will, unless and until they decide to close the port of Weihaiwei and reserve it exclusively as a naval base, lease to the Government of the United Kingdom free of charge for a period of 30 years, with option of renewal by the holders, certain land and buildings in the territory of Weihaiwei, as detailed in Annex II, for the requirements of the British Consulate and the public interests of the residents.

#### *Article XIX*

Existing aids to navigation, i.e., lighthouses, markbuoys, storm signals, etc., shall be transferred to the National Government of the Republic of China free of charge, and shall be maintained in the future by the competent Chinese authorities, who shall administer the harbour in the same way as at the open ports of China.

#### *Article XX*

The present Convention shall be ratified, and ratifications thereof shall be exchanged at Nanking on or before the first day of October, 1930, which is the first day of the tenth month of the nineteenth year of the Republic of China.

It shall come into force from the date of the exchange of ratifications.

In faith whereof the above-named Plenipotentiaries have signed the present Convention in duplicate and have affixed thereto their seals.

Done at Nanking this eighteenth day of the fourth month of the nineteenth year of the Republic of China, corresponding to the eighteenth day of April, nineteen hundred and thirty.

(Signed) CHENGTING T. WANG

(Signed) MILES W. LAMPSON

#### ANNEX I

Stores to be handed over to the Chinese Authorities include the following:

Part of furniture in offices and houses.

Telegraph cable (island and mainland).

S. L. "Alexandra," two boats.

All lamps and posts in streets and stores for lamps which belong to the Administration of Weihaiwei.

Sanitary carts, mules and equipment.

Fire Engine.

Telephones, poles, insulators, wire and exchange.

Police uniforms (in use and in store).

Various police stores.

Cycles.

Rifles, etc. (in use by police) with ammunition.

Telephone cable (island and mainland).

#### ANNEX II

List of the land and Buildings in the territory of Weihaiwei to be leased by the National Government of the Republic of China to the Government of the United Kingdom of Great Britain and Northern Ireland:

The senior district officers's house, grounds and stables are to be leased for use as a consular residence and the non-commissioned officer's mess and grounds for use as consular offices.

The two foreign cemeteries, one in Port Edward and one in Liukungtao.

Block "A" of the former barracks is to be loaned for use as a British Club, provided, however, that, in case the said club should cease to exist, the building shall revert to the National Government of the Republic of China without compensation.

As regards the piece of waste land known as the parade ground, it is agreed that it shall continue to be used as at

present as an international recreation ground and golf course unless it is required for public purposes, including port development, in which case the Chinese Administration undertakes first to provide in lieu an equally suitable recreation ground and golf course elsewhere.

A map showing the land and buildings above referred to, with the exception of the civil cemetery on Liukungtao, is attached.

## AGREEMENT

The Undersigned having been duly authorized by their respective Governments have agreed as follows:

### *Article I*

The National Government of the Republic of China will loan to the Government of the United Kingdom of Great Britain and Northern Ireland as a sanatorium and summer resort for the use of His Britannic Majesty's Navy a certain number of buildings and facilities, as detailed in the Annex attached hereto, on the island of Liukungtao in the Bay of Weihaiwei for a period of ten years, with the option of renewal on the same terms by agreement or on such other terms as may be agreed upon between the two Governments. Upon the termination of the period of the loan all the land and buildings shall revert to the National Government.

### *Article II*

The National Government of the Republic of China will as far as possible maintain efficiently the existing system of municipal services on Liukungtao (i.e., roads, wharves, police, sanitation and lighting), conserve the existing forests, permit no brothels, permit the sale of no liquors or intoxicants except in licensed premises, and maintain the present regulations as regards cultivation. The National Government undertakes that, in the event of the sale, or grant of leases, of Government land or buildings on Liukungtao, such conveyances or leases shall contain a clause enforcing the observance of the above-mentioned stipulations.

### *Article III*

1. His Britannic Majesty's Ships and auxiliaries visiting Liukungtao and its waters during the months of April to October, inclusive, will be accorded the use, after the

Chinese Navy, of that portion of the anchorage that has been dredged by His Britannic Majesty's Navy, Nevertheless, in the event of war involving either His Britannic Majesty or the Chinese Republic, His Britannic Majesty's Ships or auxiliaries shall withdraw from Liukungtao waters, in accordance with International usage.

2. Ships of His Britannic Majesty's Navy will be accorded the privilege of towing targets from the aforementioned anchorage to the sea, reasonable care being taken to avoid damage to fishing nets.

3. During the period of the loan to the Government of the United Kingdom of a certain number of buildings and facilities on Liukungtao, as stated in *Article I* of the present Agreement, His Britannic Majesty's Navy will be accorded the privilege of landing men for drill or rifle practice on Liukungtao after obtaining permission from the Chinese Authorities, which will be given on application, to be renewed yearly. In the event of local disturbances occurring, such privileges may be temporarily foregone on representations being made by the local authorities.

#### *Article IV*

The importing, storing, shipping and transshipping at Weihaiwei of stores of all kinds for the purposes of His Britannic Majesty's Navy will be permitted according to the usage of the ports open to foreign trade. The Government of the United Kingdom will not store arms or ammunition on Liukungtao.

#### *Article V*

Existing buoys and moorings that have been laid by His Britannic Majesty's Navy in Weihaiwei waters shall be transferred, free of charge, to and maintained by the National Government of the Republic of China for the use of His Britannic Majesty's Navy after the Chinese Navy. All these buoys and moorings, however, may be removed from time to time as the Chinese naval or harbour authorities may deem expedient.

*Article VI*

The present Agreement shall be ratified, and ratifications thereof shall be exchanged at Nanking on or before the first day of October, 1930, which is the first day of the tenth month of the nineteenth year of the Republic of China.

It shall come into force from the date of the exchange of ratifications.

In faith whereof the Undersigned Plenipotentiaries, duly authorized thereto, have signed the present Agreement in duplicate and have affixed thereto their seals.

Done at Nanking this eighteenth day of the fourth month of the nineteenth year of the Republic of China, corresponding to the eighteenth day of April, nineteen hundred and thirty.

(Signed) CHENGTING T. WANG

For the National Government of the  
Republic of China.

(Signed) MILES W. LAMPSON

For the Government of the United  
Kingdom of Great Britain and  
Northern Ireland.

**ANNEX**

List of Facilities to be granted and Land and Buildings on Liukungtao to be leased to the Government of the United Kingdom of Great Britain and Northern Ireland by the National Government of the Republic of China.

1. Golf Club and golf club-house.
2. Royal naval canteen teahouse.
3. Naval cemetery.
4. Admiralty village.
5. Warrant officers' club and tennis courts.
6. Officers' and Men's recreation grounds together with the buildings thereon and the hockey and cricket grounds and tennis courts, and the officers' squash courts.
7. That portion of the "hospital site," with buildings, etc., thereon, situated southward to the road traversing the site about its centre, together with the Commander-in-Chief's tennis courts, as shown on the accompanying plan (marked "A").

8. Commander-in-Chief's office (61) and house adjoining (62).
9. United Services Club and garden (57).
10. Residences Nos. (52), (54), (55), (58), (59), (60), (73),  
    ' on plan with their gardens.
11. Hospital (53), hospital store (50) residence for sick  
    berth staff (49), and dynamo house (51).
12. Storehouses Nos. (70), (30-40), including (75), (47),  
    (48), (68), (29a), and two bays of No. (29), i.e.,  
    sufficient for the storage of 6,000 tons of coal.
13. Royal naval canteen (temporarily pending the pro-  
    vision by the National Government of the Republic  
    of a suitable building in lieu).

NOTE: The numbers in brackets refer to the numbers on the plan (marked "B") attached.

Joint use with the Chinese Navy of the following facilities and land and buildings:

1. Rifle ranges, including land and buildings.
2. Two artesian wells.
3. Iron pier. ' "

Also accommodation in camber for naval coal lighters and facilities in respect of coaling colliers.

As regards the quarries to be handed over under the provisions of the Convention for the Rendition of Weihaiwei, the Government of the United Kingdom shall be permitted to obtain stone therefrom when required free of cost.

Two plans (marked "A" and "B") showing the land and buildings, etc., above referred to are attached.

## APPENDIX XIV

### DIPLOMATIC NOTES ON EXTRATER- RITORIALITY<sup>1</sup>

On April 27, 1929, the Minister for Foreign Affairs addressed Notes to the American, Brazilian, British, Dutch, French and Norwegian Envoys, urging the early abolition of extraterritoriality. The Notes were similar in wording, those addressed to the American, British and French Ministers being identical.

The text of the Notes to the British, American and French Ministers is as follows:

MINISTRY OF FOREIGN AFFAIRS,  
NANKING,  
April 27, 1929.

YOUR EXCELLENCY:

I have the honour to recall to Your Excellency that the Chinese Government, through its representative, had had occasion to express at the Paris Peace Conference its strong desire for the removal of limitations on China's jurisdictional sovereignty imposed upon her by the old treaties concluded between China and the foreign Powers and that the Chinese Delegation emphatically reiterated the same desire at the Washington Conference, which placed on record its sympathetic disposition towards furthering the aspiration of China for the removal of restrictions on her political, jurisdictional and administrative freedom of action.

With the unification of China and the establishment upon a firm foundation of the National Government, a new era has been happily inaugurated in the relations between our two countries through the conclusion of the recent Tariff Treaty, and it is to be confidently hoped that the material well-being of our two countries will henceforth be greatly enhanced. But it is the belief and the conviction of the Chinese Government

<sup>1</sup> *China Year Book: 1929-30*, pp. 904, 905.



that the promotion of such material well-being will be accelerated by a readjustment of the relations between our two countries on a basis of friendly equality in matters of jurisdiction, and if Your Excellency's Government could see its way to meet the wishes of the Chinese Government and people in this regard, it is certain that another obstacle to the full and frank co-operation, in trade or otherwise, between the Chinese people and foreign nationals in this country would be happily removed and that the desire of the Chinese Government for promoting to the fullest extent the material interests of all who choose to associate themselves with our own people would find its early realization.

It goes without saying that extraterritoriality in China is a legacy of the old regime, which has not only ceased to be adaptable to the present-day conditions, but has become so detrimental to the smooth working of the judicial and administrative machinery of China that her progress as a member of the Family of Nations has been unnecessarily retarded. The inherent defects and inconveniences of the system of consular jurisdiction have been most clearly pointed out by the Chinese Government on various occasions and also by the jurists and publicists of other countries in their official utterances as well as in their academic discussions. It is a matter for sincere regret that, while many Governments which are playing an important role in international affairs are eager and persistent in their endeavour to promote genuine friendship and harmony among nations, such anachronistic practices as only tend to mar the friendly relations between the Chinese people and foreign nationals should be allowed to exist at a time when justice and equity are supposed to govern the relations of nations.

With the close contact between China and the foreign Powers, the assimilation of western legal conceptions by Chinese jurists and incorporation of western legal principles in Chinese jurisprudence have proceeded very rapidly. In addition to the numerous codes and laws now in force, the Civil Code and the Commercial Code have reached the final stage of preparation and will be ready for promulgation before January 1st, 1930. Courts and prisons, along modern lines, have been established, and are being established, throughout the whole country.

Inasmuch as doubt has been entertained with regard to the advisability of relinquishing extraterritorial privileges at this

juncture by the interested Powers, it may be pointed out that certain countries, having ceased to enjoy extraterritorial privileges in China, have found satisfaction in the protection given to their nationals by Chinese law and have had no cause for complaint that their interests have been in any way prejudiced. Your Excellency's Government may, therefore, rest assured that the legitimate rights and interests of your nationals will not be unfavourably affected in the least by the relinquishment of the exceptional privileges which they now possess.

As Your Excellency's Government has always maintained a friendly attitude towards China and has always shown its readiness in the adoption of measures for the removal of limitations on China's sovereignty, I am happy to express to Your Excellency, on behalf of the Chinese Government, the desire of China to have the restrictions on her jurisdictional sovereignty removed at the earliest possible date and confidently hope that Your Excellency's Government will take this desire of China into immediate and sympathetic consideration and favour me with an early reply so that steps may be taken to enable China, now unified and with a strong Central Government, to rightfully assume jurisdiction over all nationals within her domain.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.

(Signed) C. T. WANG,  
Minister of Foreign Affairs.

## APPENDIX XV

### MANDATE RELATING TO EXTRATER- RITORIALITY<sup>1</sup>

*Issued by the National Government on May 4, 1931*

"The abolition of extraterritorial privileges of foreign nationals in China has been unanimously desired and persistently urged by the Chinese people. It was declared by the mandate issued on the 28th day of the twelfth month of the 18th year of the Republic that all foreign nationals in the territory of China shall abide by the laws, ordinances and regulations of the Central and Local Governments in China. The petition now submitted by the Executive Yuan and the Judicial Yuan states that for the execution of the said mandate, a set of regulations of twelve articles governing the exercise of jurisdiction over foreign nationals in China has been drawn up by the competent departments and duly examined by the Legislative Yuan. These regulations are hereby promulgated and it is decided and declared that they shall come into force on the first day of the first month of the twenty-first year of the Republic (January 1, 1932)."

<sup>1</sup>*China Year Book: 1931-32, p. 263.*

## APPENDIX XVI

### REGULATIONS GOVERNING THE EXERCISE OF JURISDICTION OVER FOREIGN NATIONALS IN CHINA<sup>1</sup>

*Art. 1.* The term "foreign nationals" used in these Regulations exclusively refers to those foreign nationals who enjoyed extraterritorial privileges in China on the thirty-first day of the twelfth month of the eighteenth year of the Republic.

*Art. 2.* Foreign nationals shall be subject to the jurisdiction of the Chinese Courts of Justice of all instances.

*Art. 3.* In the District Court in the Special Area of the Three Eastern Provinces and in the District Courts at Shenyang, Tientsin, Tsingtao, Shanghai, Hankow, Chungking, Foochow, Canton and Kunmin, as well as in the Provincial High Courts to which such District Courts respectively belong, Special Chambers shall be established for the trial of civil and criminal cases in which foreign nationals are defendants or accused.

*Art. 4.* The Chief Judge of the Special Chamber shall be the President of the Court to which it belongs.

*Art. 5.* Where a civil or criminal case involving a foreign national as defendant or accused arises within the jurisdiction of a Court other than those mentioned in *Article 3*, the defendant or accused may request in writing that the case be heard by that Court.

*Art. 6.* To the Special Chambers there shall be assigned a certain number of legal counsellors who shall be selected by the Ministry of Justice for appointment by the Government from among legal experts of high moral character who possess the qualifications necessary for appointment to judicial offices.

The legal counsellors are not confined to Chinese.

<sup>1</sup> *China Year Book*: 1931-32, p. 263.

The legal counsellor may submit his views in writing to the Court but shall not interfere with the trial of the case.

*Art. 7.* The arrest or detention of a foreign national as well as the search of his private residence or other premises shall be effected according to the Code of Criminal Procedure. Any foreign national who is arrested on the suspicion of having committed an offense under the Criminal Code or other Criminal Laws shall be sent to the Court for investigation not later than twenty-four hours.

*Art. 8.* At the request of the party or parties concerned, the Courts shall recognize as valid the agreements for arbitration entered into between foreign nationals or between foreign nationals and other persons, and shall also enforce the awards made in pursuance of such agreements except where:

1. The award is contrary to public order;
2. It is contrary to good morals; or
3. It should be regarded as invalid according to the general principles of law.

*Art. 9.* Foreign nationals parties to civil or criminal cases may employ according to law Chinese or foreign lawyers as representatives or counsel.

The Regulation for Lawyers and other laws and regulations concerning lawyers are applicable to the above-mentioned foreign lawyers.

*Art. 10.* Foreign nationals having committed police offences shall be tried by the Courts of Justice or police tribunals.

The penalty to be imposed by a police tribunal shall be limited to a fine not exceeding fifteen dollars except for subsequent offences.

Where the fine mentioned in the preceding paragraph is not paid within five days after its imposition, it shall be commuted to detention at the rate of one dollar for one day. If the amount is less than one dollar, it shall be reckoned as one day.

*Art. 11.* The places for the imprisonment or detention of foreign nationals shall be designated by the Ministry of Justice.

*Art. 12.* The date on which these Regulations shall come into force as well as the period during which they shall remain in force shall be declared by a mandate of the National Government.



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